

**EXHIBIT**

**A**

**COOPER, ROBIN VS. LIMESTONE BANK, INC.**

JEFFERSON CIRCUIT COURT

Filed on **05/03/2023** as **CONTRACT - OTHER** with **HON. MITCH PERRY**

\*\*\*\* NOT AN OFFICIAL COURT RECORD \*\*\*\*

**Case Memo****23-CI-002712**

CONTRACT-OTHERJURY FEE PAIDH OLD UNTIL 8/28/23

**Parties****23-CI-002712****COOPER, ROBIN as PLAINTIFF / PETITIONER****LIMESTONE BANK, INC. as DEFENDANT / RESPONDENT****Memo**

Registered Agent of Service exists.

**Address**

2500 EASTPOINT PKWY  
CEO JOHN T. TAYLOR  
LOUISVILLE KY 40223

**Summons****CIVIL SUMMONS** issued on **05/24/2023** by way of **CERTIFIED MAIL**

923609019403831650391006/12/20 23- UNCLAIMED

**CIVIL SUMMONS** issued on **05/03/2023** by way of **CERTIFIED MAIL**

923609019403831360867006/19/20 23-UNCLAIMED

**PEOPLES BANK as DEFENDANT / RESPONDENT****Memo**

Registered Agent of Service exists.

**Address**

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COHNE & MALAD, LLP  
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 INDIANAPOLIS IN 46204

**CT CORPORATION SYSTEM as REGISTERED AGENT OF SERVICE****Memo**

Related party is PEOPLES BANK

**Address**

306 W. MAIN STREET  
 SUITE 512  
 FRANKFORT KY 40601

**Summons**

**CIVIL SUMMONS** issued on **07/06/2023** served / recalled on **07/11/2023** by way of **CERTIFIED MAIL**  
 9236090194038321675084Successful

**CT CORPORATION SYSTEM as REGISTERED AGENT OF SERVICE****Memo**

Related party is LIMESTONE BANK, INC. D/B/A OF PEOPLES BANK OHIO CO

**Address**

306 W. MAIN STREET  
 SUITE 512  
 FRANKFORT KY 40601

**Summons**

**CIVIL SUMMONS** issued on **05/24/2023** served / recalled on **05/30/2023** by way of **CERTIFIED MAIL**  
 9236090194038316503934Successful

**Documents****23-CI-002712****COMPLAINT / PETITION** filed on **05/03/2023****EXHIBIT** filed on **05/03/2023****INTERROGATORIES** filed on **05/03/2023****REQUEST FOR PRODUCTION OF DOCUMENTS** filed on **05/03/2023**  
*ADDITIONAL DOCUMENT***TENDERED DOCUMENT** filed on **06/16/2023**  
*DEFENDANTS MOTION TO DISMISS THE COMPLAINT***AMENDED COMPLAINT** filed on **07/06/2023****EXHIBIT** filed on **07/06/2023**  
*EXHIBIT A***EXHIBIT** filed on **07/06/2023**  
*ORIGINAL COMPLAINT***INTERROGATORIES** filed on **07/06/2023**  
*INTERROGATORIES***REQUEST FOR PRODUCTION OF DOCUMENTS** filed on **07/06/2023**  
*REQUESTS FOR PRODUCTION***TENDERED DOCUMENT** filed on **07/10/2023**  
*AGREED ORDER EXTENDING DEFENDANTS DEADLINE TO ANSWER OR OTHERWISE RESPOND TO PLAINTIFFS COMPLAINT***ORDER - AGREED** entered on **07/12/2023**  
*EXTENDING DEFENDANT'S DEADLINE TO ANSWER OR RESPOND***Events****23-CI-002712**

**MOTION NOT REQUIRING HEARING** scheduled for **06/19/2023 12:00 AM** in room **3** with **HON. MITCH PERRY**  
*DEFENDANTS MOTION TO DISMISS THE COMPLAINT*

**Motions**

- **MOTION TO DISMISS** filed on **06/16/2023** by **AD**  
*DATE REFERENCE ONLY*

Images	23-CI-002712
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<b>REQUEST FOR PRODUCTION OF DOCUMENTS</b> filed on <b>05/03/2023</b> Page(s): 10	
<b>COURTESY FINANCIAL TRANSACTION REPORT</b> filed on <b>05/03/2023</b> Page(s): 1	
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\*\*\*\* End of Case Number : 23-CI-002712 \*\*\*\*



**EXHIBIT**

**B**



**CT Corporation  
Service of Process Notification**

05/30/2023

CT Log Number 543949724

**Service of Process Transmittal Summary**

**TO:** Legal Team  
Peoples Bank  
PEOPLES BANK, 138 PUTNAM STREET  
MARIETTA, OH 45750

**RE:** Process Served in Kentucky

**FOR:** Peoples Bank Ohio Co (Assumed Name) (Domestic State: OH)  
Peoples Bank (True Name)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** ROBIN COOPER, individually and on behalf of all others similarly situated vs. LIMESTONE BANK, INC. D/B/A OF PEOPLES BANK OHIO CO  
Name discrepancy noted.

**CASE #:** 23CI002712

**PROCESS SERVED ON:** C T Corporation System, Frankfort, KY

**DATE/METHOD OF SERVICE:** By Traceable Mail on 05/30/2023

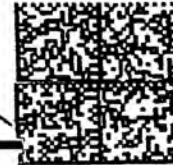
**JURISDICTION SERVED:** Kentucky

**ACTION ITEMS:** CT will retain the current log  
Image SOP  
Email Notification, Legal Team legal@pebo.com  
Email Notification, Ryan Kirkham ryan.kirkham@pebo.com

**REGISTERED AGENT CONTACT:** C T Corporation System  
306 W. Main Street  
Suite 512  
Frankfort, KY 40601  
866-539-8692  
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.

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David L. Nicholson, Jefferson  
Circuit Clerk  
600 West Jefferson Street  
Louisville, KY 40202-4731

**USPS CERTIFIED MAIL**

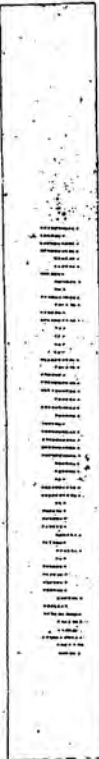


Case Number: 23-CI-002712

**9236 0901 9403 8316 5039 34**

**Restricted Delivery**

CT CORPORATION SYSTEM  
306 W. MAIN STREET  
SUITE 512  
FRANKFORT, KY 40601



AOC-E-105 Sum Code: CI  
Rev. 9-14

Commonwealth of Kentucky  
Court of Justice Courts.ky.gov

CR 4.02; Cr Official Form 1



## CIVIL SUMMONS

Case #: **23-CI-002712**

Court: **CIRCUIT**

County: **JEFFERSON Circuit**

*Plaintiff, COOPER, ROBIN VS. LIMESTONE BANK, INC., Defendant*

**TO: CT CORPORATION SYSTEM  
306 W. MAIN STREET  
SUITE 512  
FRANKFORT, KY 40601**

Memo: Related party is LIMESTONE BANK, INC. D/B/A OF PEOPLES BANK OHIO CO

The Commonwealth of Kentucky to Defendant:  
**LIMESTONE BANK, INC.**

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

*Davis L. Nicholas*

Jefferson Circuit Clerk

Date: **5/24/2023**

### Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20 \_\_\_\_\_

Served By \_\_\_\_\_

Title \_\_\_\_\_

Summons ID: 604299041600961@00001034079  
CIRCUIT: 23-CI-002712 Certified Mail  
COOPER, ROBIN VS. LIMESTONE BANK, INC.



**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**CLASS ACTION COMPLAINT**

**JURY DEMAND**

**CLASS ACTION COMPLAINT**

Plaintiff, Robin Cooper, individually and on behalf of the class of persons preliminarily defined below (the "Class"), makes the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

**NATURE OF THE ACTION**

1. This is a civil action seeking monetary damages, restitution, and injunctive and declaratory relief from Limestone Bank, Inc. ("Defendant"), arising from its improper assessment and collection of \$35 overdraft fees ("OD Fees") on debit card transactions that were authorized on sufficient funds.

2. Besides being deceptive, these practices breach contract promises made in Defendant's adhesion contracts which, upon information and belief, include the Overdraft Opt-In Form attached hereto as Exhibit A (the "Contract").

3. Plaintiff and other Defendant customers have been injured by Defendant's practices. Plaintiff, individually and on behalf of the class of individuals preliminarily defined below, bring claims for breach of contract, including the duty of good faith and fair dealing, unjust





enrichment and violations of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300) (the “KCPA”).

### **PARTIES**

4. Plaintiff is an individual and citizen of Kentucky, and a resident of Daviess County, and has had a checking account with Defendant at all times material hereto.

5. Defendant is a bank with over \$1.5 billion in assets with and maintains several branches in Kentucky including in this County. Its principal place of business is in this County.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter because Defendant is at home in this State.

7. Defendant regularly and systematically conducts business and provides retail banking services in this state and provides retail banking services to customers in this state, including Plaintiff and members of the putative Class. As such, it is subject to the jurisdiction of this Court.

8. Venue is likewise proper in this county pursuant to KRS § 452.445 because Defendant’s principal office is in this County.

9. Pursuant to CR 8.01, the amount in controversy exceeds the minimum jurisdiction of the Jefferson Circuit Court.

### **BACKGROUND FACTS**

10. In 2021, the largest financial institutions in America charged customers almost \$11 billion in overdraft fees. Customers who carried an average balance of less than \$350 paid 84 percent of these fees. *Why Poverty Persists in America* (The New York Times, Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html>.

11. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo, Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. *See* Hugh Son, *Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check Fees*, CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>.

12. Federal regulators have also taken action. For example, the Consumer Financial Protection Bureau (CFPB) recently fined Regions Bank \$191 million, finding that it “acted unfairly and abusively” in violation of the Consumer Financial Protection Act of 2010 by assessing *the same “surprise” APSN fees at issue here*. CFPB, *Enforcement Actions, Regions Bank* (Sep. 28, 2022), *available at* [https://www.consumerfinance.gov/enforcement/actions/regions-bank\\_2022](https://www.consumerfinance.gov/enforcement/actions/regions-bank_2022) (last accessed Mar. 22, 2023).

13. In line with this industry trend, the New York Attorney General recently asked other industry leading banks to end the assessment of all OD Fees by the summer of 2022. *NY Attorney General asks banks to end overdraft fees*, Elizabeth Dilts Marshall, Reuters (April 6, 2022).

14. Through the imposition of these fees, Defendant has made substantial revenue to the tune of tens of millions of dollars, seeking to turn its customers’ financial struggles into revenue.

**I. DEFENDANT ASSESSES OVERDRAFT FEES ON DEBIT CARD TRANSACTIONS THAT WERE AUTHORIZED ON SUFFICIENT FUNDS.**

15. Plaintiff brings this action challenging Defendant’s practice of charging Overdraft Fees on what are referred to in this complaint as “Authorize Positive, Settle Negative Transactions,” or “APSN Transactions.”





16. Defendant's practice is as follows: the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Defendant immediately reduces consumers' checking accounts for the amount of the purchase, sets aside funds in the checking account to cover that transaction, and adjusts the consumer's displayed "available balance" to reflect that subtracted amount. As a result, customers' accounts will always have sufficient funds available to cover these transactions because Defendant has already held the funds for payment.

17. However, Defendant still assesses crippling Overdraft Fees on many of these transactions and misrepresents its practices in the Contract.

18. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Defendant later assesses Overdraft Fees on those same transactions when they settle days later into a negative balance. These types of transactions are APSN Transactions.

19. Defendant maintains a running account balance, tracking funds consumers have for immediate use. This running account balance is adjusted, in real-time, to account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Defendant holds the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds are not available for any other use by the account holder and are specifically reserved for a given debit card transaction.

20. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a "debit hold." During the time the debit hold remains in place, which



may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498 (Jan. 29, 2009).

21. That means when any subsequent, intervening transactions are initiated on a checking account, they are compared against an account balance that has already been reduced to account for pending debit card transactions. Therefore, many subsequent transactions incur Overdraft Fees due to the unavailability of the funds held for earlier debit card transactions.

22. Still, despite always reserving sufficient available funds to cover the transactions and keeping the held funds off-limits for other transactions, Defendant improperly charges Overdraft Fees on APSN Transactions.

23. The Consumer Financial Protection Bureau ("CFPB") has expressed concern with this very issue, flatly calling the practice "unfair" and/or "deceptive" when:

[A] financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.

At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer's available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to



mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, "Supervisory Highlights" (Winter 2015).

24. There is no justification for these practices, other than to maximize Defendant's Overdraft Fee revenue. APSN Transactions only exist because intervening transactions supposedly reduce an account balance. But Defendant is free to protect its interests and either reject those intervening transactions or charge Overdraft Fees on those intervening transactions—and it does the latter to the tune of millions of dollars each year.

25. But Defendant was not content with these millions in Overdraft Fees. Instead, it sought millions more in Overdraft Fees on APSN Transactions.

26. Besides being deceptive, unfair, and unconscionable, these practices breach contract promises made in Defendant's adhesion contracts, which fundamentally misconstrue and mislead consumers about the true nature of Defendant's processes and practices. Defendant also exploits its contractual discretion by implementing these practices to gouge its customers.

**i. Mechanics of a Debit Card Transaction**

27. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from Defendant. When a customer physically or virtually "swipes" their debit card, the credit card terminal connects, via an intermediary, to Defendant, which verifies that the customer's account is valid and that sufficient available funds exist to cover the transaction amount.



28. At this step, if the transaction is approved, Defendant immediately decrements the funds in a consumer's account and holds funds in the amount of the transaction but does not yet transfer the funds to the merchant.

29. Sometime thereafter, the funds are actually transferred from the customer's account to the merchant's account.

30. Defendant (like all banks and credit unions) decides whether to "pay" debit card transactions at authorization. For debit card transactions, that moment of decision can only occur at the point of sale, when the transaction is authorized or declined. It is at that point—and only that point—that Defendant may choose to either pay the transaction or to decline it. When the time comes to actually transfer funds for the transaction to the merchant, it is too late for the bank to deny payment—the bank has no discretion and must pay the charge. This "must pay" rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it "must pay" it when the merchant later makes a demand, regardless of other account activity. See Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

31. There is no change—no impact whatsoever—to the available funds in an account when transfer step occurs.

**ii. Defendant's Contract**

32. Upon information and belief, Defendant promises in its Contract that "[a[n] overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway." Ex. A.

33. In breach of this promises, Defendant assesses Overdraft Fees when there is enough money in the account to cover the transaction.



34. Taken together, these promises also mean that Defendant will place holds on funds at the time of the authorization of a debit card transaction, which is when Plaintiff pays the merchant, and that these holds reduce Plaintiff's available balance, which is the balance that Defendant uses to determine OD Fees.

35. Upon information and belief, Defendant further promises that authorization and payment occur simultaneously and that overdrafts will be determined at the time Defendant "authorize[s] and pay[s]" the debit card transaction:

We do ***authorize and pay*** overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not ***authorize and pay*** overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always ***authorize and pay*** any type of transaction.

If we do not ***authorize and pay*** an overdraft, your transaction will be declined.

...

What if I want [Defendant] to ***authorize and pay*** overdrafts on my ATM and everyday debit card transactions?

If you also want us to ***authorize and pay*** overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

     I do not want [Defendant] to ***authorize and pay*** overdrafts on my ATM and everyday debit card transactions.



\_\_\_ I want [Defendant] to **authorize and pay** overdrafts on my ATM and everyday debit card transactions.

Ex. A (emphasis added).

36. Defendant links payment to authorization **eight times**, meaning that transactions are paid, and therefore overdrafts are determined, at authorization.

37. For APSN Transactions, which are immediately deducted from a positive account balance and held aside for payment of that same transaction, there are always sufficient funds to cover those transactions—yet Defendant assesses Overdraft Fees on them anyway.

38. The above promises indicate that transactions are only overdraft transactions when they are authorized and approved into a negative account balance. Of course, that is not true for APSN Transactions.

39. In fact, Defendant actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to post those same transactions. Instead, it uses a secret posting process described below.

40. All of the above representations and contractual promises are untrue. Defendant charges fees even when sufficient funds exist to cover transactions that are authorized into a positive balance. No express language in any document states that Defendant may impose fees on any APSN Transactions.

41. The Contract also misconstrues Defendant's true debit card processing and overdraft practices.

42. First, and most fundamentally, Defendant charges Overdraft Fees on debit card transactions for which there are sufficient funds available to cover throughout their lifecycle.



43. Defendant's practice of charging Overdraft Fees even when sufficient available funds exist to cover a transaction violates its contractual promise not to do so. This discrepancy between Defendant's actual practice and the Contract causes consumers like Plaintiff to incur more Overdraft Fees than they should.

44. Next, sufficient funds for APSN Transactions are actually debited from the account immediately, consistent with standard industry practice.

45. Because these withdrawals take place upon initiation, the funds cannot be re-debited later. But that is what Defendant does when it re-debits the account during a secret batch posting process.

46. Defendant's actual practice is to assay the same debit card transaction twice to determine if it overdraws an account—both at the time a transaction of authorization and later at the time of settlement.

47. At the time of settlement, however, an available balance does not change at all for these transactions previously authorized into positive funds. As such, Defendant cannot then charge an Overdraft Fee on that transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

48. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, Defendant releases the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debits the same transaction a second time.

49. This secret step allows Defendant to charge Overdraft Fees on transactions that never should have gotten them—transactions that were authorized into sufficient funds, and for which Defendant specifically set aside money to pay.



50. In sum, there is a huge gap between Defendant's practices as described in the Contract and Defendant's actual practices.

51. Banks and credit unions like Defendant that employ this abusive practice require their accountholders to expressly agree to it—something Defendant here never did.

52. Indeed, recognizing the complexity of the settlement process for APSN Transactions and the fact that a fee in such circumstances is counterintuitive to accountholders, other banks and credit unions require their accountholders to agree to be assessed Overdraft Fees on APSN Transactions.

53. Defendant and its accountholders make no such agreement. The Contract thus misleads and deceives account holders.

**iii. Reasonable Consumers Understand Debit Card Transactions Are Debited Immediately**

54. Defendant's assessment of Overdraft Fees on transactions that have not overdrawn an account is inconsistent with immediate withdrawal of funds for debit card transactions. This is because if funds are immediately debited, they cannot be depleted by intervening, subsequent transactions. If funds are immediately debited, they are necessarily applied to the debit card transactions for which they are debited.

55. Defendant was and is aware that this is precisely how its accountholders reasonably understand debit card transactions work.

56. Defendant knows that consumers prefer debit cards for these very reasons. Consumer research shows that consumers prefer debit cards as budgeting devices because they don't allow debt like credit cards as the money comes directly out of the checking account.

57. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is



no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of ‘float’ time that a check usually takes to clear.” *What Do I Need To Know About Using A Debit Card?*, ConsumerAction (Jan. 14, 2019), <https://bit.ly/3v5YL62>.

58. This understanding is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have viewed debit cards (along with credit cards) “as a more convenient option than refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch (Mar. 23, 2016), <https://on.mktw.net/3kV2zCH>.

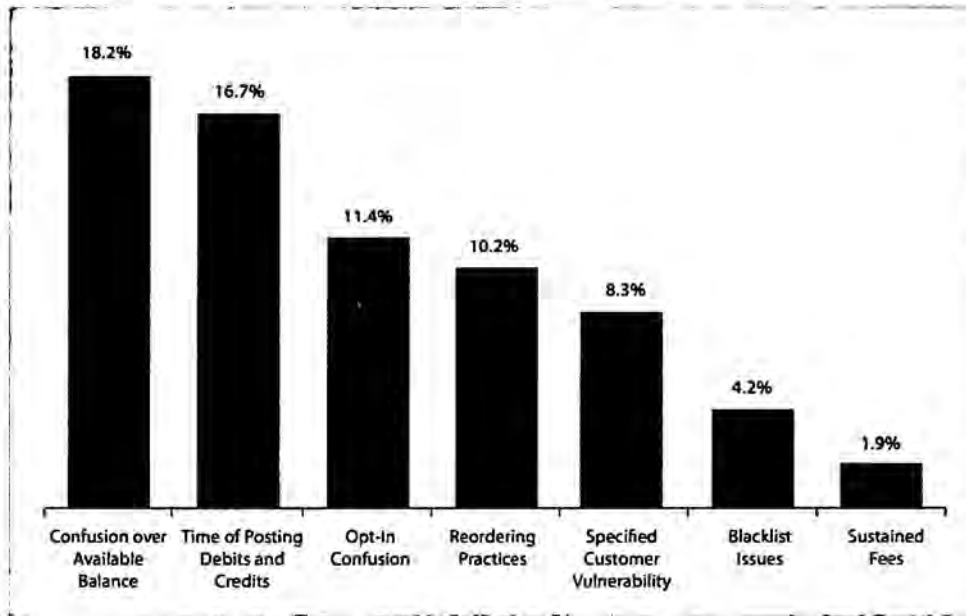
59. Not only have consumers increasingly substituted debit cards for cash, but they believe that a debit card purchase is the functional equivalent to a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

60. Accordingly, “[o]ne of the most salient themes [in complaints to the CFPB] . . . is the difficulty avoiding overdrafts even when consumers believed they would. Often, this was related to bank practices that make it difficult for consumers to know balance availability, transaction timing, or whether or not overdraft transactions would be paid or declined.” Rebecca Borne et al., *Broken Banking: How Overdraft Fees Harm Consumers and Discourage Responsible Bank Products*, Center for Responsible Lending 8 (May 2016), <https://bit.ly/3v7SvL1>.



61. In fact, consumers' leading complaints involved extensive confusion over the available balance and the time of posting debits and credits:

Figure 3: Top Overdraft Consumer Complaint Issues, by Percentage of Total Complaints



*Id.*

62. Consumers are particularly confused by financial institutions' fee practices when "based on their actual review of their available balance, often including any 'pending' transactions, [customers] believed funds were available for transactions they made, but they later learned the transactions had triggered overdraft fees." *Id.* at 9.

63. Ultimately, unclear and misleading fee representations like those in Defendant's account documents mean that consumers like Plaintiff "who are carefully trying to avoid overdraft, and often believe they will avoid it . . . end up being hit by fees nonetheless." *Id.*

64. The Federal Deposit Insurance Corporation ("FDIC") has specifically noted that financial institutions may effectively mitigate this wide-spread confusion regarding overdraft practices by "ensuring that any transaction authorized against a positive available balance does not incur an overdraft fee, even if the transaction later settles against a negative available balance."

*Consumer Compliance Supervisory Highlights*, FDIC 3 (June 2019), <https://bit.ly/3t2ybsY>.



65. Despite this recommendation, Defendant continues to assess Overdraft Fees on transactions that are authorized on sufficient funds.

66. Defendant was aware of the consumer perception that debit card transactions reduce an account balance at a specified time—namely, the time and order the transactions are actually initiated—and the Contract only supports this perception.

67. Defendant was also aware of consumers' confusion regarding Overdraft Fees but nevertheless failed to make its customers agree to these practices.

**iv. Plaintiff Was Assessed an Overdraft Fee on Debit Card Transactions Previously Authorized on Sufficient Funds**

68. On January 18, 2022, May 6, 2022 and September 19, 2022, Plaintiff was assessed Overdraft Fees on transactions previously authorized on sufficient funds.

69. Because Defendant had previously held the funds to cover these transactions, Plaintiff's account always had sufficient funds to "cover" the transactions and should not have been assessed these fees.

70. The improper fees charged by Defendant were also not errors by Defendant, but rather were intentional charges made by Defendant as part of its standard processing of transactions.

71. Plaintiff therefore had no duty to report the fees as errors because they were not errors, but were part of the systematic and intentional assessment of fees according to Defendant standard practices.

72. Moreover, any such reporting would have been futile as Defendant's own contract admits that Defendant made a decision to charge the fees.



### CLASS ALLEGATIONS

73. Plaintiff brings this action individually and as a class action on behalf of the following proposed Class:

All Kentucky citizens who, during the applicable statute of limitations, were Defendant checking account holders and were assessed an overdraft fee on a debit card transaction that was authorized on sufficient funds and settled on negative funds in the same amount for which the debit card transaction was authorized.

Plaintiff reserves the right to modify or amend the definition of the Class as this litigation proceeds.

74. Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

75. The time period for the Class is the number of years immediately preceding the date on which this Complaint was filed as allowed by the applicable statute of limitations, going forward into the future until such time as Defendant remedies the conduct complained of herein.

76. The members of the Class are so numerous that joinder is impractical. The Class consist of thousands of members, the identities of whom are within the exclusive knowledge of Defendant and can be readily ascertained only by resort to Defendant's records.

77. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, like all members of the Class, was charged improper fees as set forth herein. The representative Plaintiff, like all members of the Class, has been damaged by Defendant's misconduct. Furthermore, the factual basis of Defendant's misconduct is common to all members of the Class and represents a common thread of unlawful and unauthorized conduct resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other members of the Class.

78. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual members of the Class.

79. Among the questions of law and fact common to the Class include:

- a. Whether Defendant charged OD Fees on APSN Transactions;
- b. Whether this fee practice breached the Contract and Defendant's duty of good faith and fair dealing;
- c. Whether Defendant was unjustly enriched by this practice;
- d. Whether Defendant violated the KCPA;
- e. The proper method or methods by which to measure damages; and
- f. The declaratory and injunctive relief to which the Class are entitled.

80. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions, particularly on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

81. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual class member's claim is small relative to the complexity of the litigation, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Defendant's misconduct will proceed without remedy.

82. Even if class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a



class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

83. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all Class members, is at risk of additional improper fees. Plaintiff and the Class members are entitled to injunctive and declaratory relief as a result of the conduct complained of herein. Money damages alone could not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant from continuing to commit its unfair and illegal actions.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract, Including Breach of the Duty of Good Faith and Fair Dealing**  
*(On Behalf of Plaintiff and the Class)*

84. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

85. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's account documents. *See* Exs. A.

86. All contracts entered by Plaintiff and the Class are identical or substantively identical because Defendant's form contracts were used uniformly.

87. Defendant has breached the express terms of its own agreements as described herein.

88. Knetucky imposes a duty of good faith and fair dealing on contracts between banks and their customers because banks are inherently in a superior position to their checking account holders because, from a superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.



89. Defendant abuses its discretion in its own favor—and to the prejudice of Plaintiff and other customers—by charging OD Fees on APSN Transactions. This is an abuse of the power that Defendant has over Plaintiff and her bank account, is contrary to Plaintiff's reasonable expectations under the Contract, and breaches Defendant's implied covenant to engage in fair dealing and to act in good faith.

90. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

91. Defendant has breached the covenant of good faith and fair dealing in the contract through its policies and practices as alleged herein.

92. Defendant harms Plaintiff and members of the Class by abusing its contractual discretion that no reasonable customer would anticipate.

93. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the Contract.

94. Plaintiff and members of the Class have sustained damages because of Defendant's breach of the Contract.

95. Plaintiff and members of the Class have sustained damages because of Defendant's breach of the covenant of good faith and fair dealing.



**SECOND CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On Behalf of Plaintiff and the Class)**

96. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

97. Plaintiff and members of the Class conferred a benefit on Defendant at the expense of Plaintiff and members of the Class when they paid improper OD Fees.

98. There was an appreciation of this benefit by Defendant in the form of the substantial revenue that Defendant generates from the imposition of such fees.

99. Defendant has inequitably accepted such improper fees without payment to Plaintiff and members of the Class for their value.

100. Defendant should not be allowed to profit or enrich itself inequitably at the Plaintiff' and the Class' expense and should be required to make restitution to Plaintiff and the Class.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300)**  
**(On Behalf of Plaintiff and the Class)**

101. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

102. The Commonwealth of Kentucky believes that “the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services.” KRS § 367.120(1).



103. In furtherance of this public policy objective, the Kentucky Consumer Protection Act (the “KCPA”) was enacted in order to prevent “unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce.” KRS § 367.170(1).

104. Defendant is engaged in trade or commerce as defined in the KCPA because it offered and continues to offer its bank account deposit, checking, and debit card services to the people of Kentucky, including Plaintiff and members of the Class.

105. Plaintiff has standing to bring this action under KRS § 367.220 because they entered into a contract with Defendant for the purchase of its bank account deposit, checking and debit card services primarily for personal, family or household purposes.

106. “Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce” are unlawful pursuant to the KCPA. KRS § 367.170(1).

107. Defendant engaged in unfair, false, misleading, or deceptive acts or practices or otherwise violated KCPA by, among other things, knowingly and intentionally employing a policy and practice of charging improper fees.

108. Defendant’s conduct caused Plaintiff and the members of the Class to suffer ascertainable losses in the form of improper fees that, but for Defendant’s unfair, false, misleading, or deceptive practices and policies described herein, would not have otherwise been imposed.

109. Plaintiff and Class members are entitled to damages, declaratory relief, injunctive relief, and attorneys’ fees and costs. KRS § 367.220.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff and members of the Class demand a jury trial on all claims so triable and judgment as follows:

- a. Certification for this matter to proceed as a class action;



- b. Declaratory and injunctive relief to the extent Defendant is in breach of its contract;
- c. Designation of Plaintiff as the Class Representative and designation of the undersigned as Class Counsel;
- d. Restitution of all improper fees paid to Defendant by Plaintiff and the Class because of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual damages in amount according to proof;
- f. Pre- and post-judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- h. Such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff, by counsel, demands trial by jury.

Dated: May 3, 2023

By: /s/ Andrew Mize  
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*\*Pro hac vice applications forthcoming*

*Attorneys for Plaintiff and the Putative Class*

## What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

### ➤ What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

### ➤ What fees will I be charged if [Institution Name] pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

### ➤ What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

-----

☐ I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

☐ I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

[Account Number]: \_\_\_\_\_ ]





**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES  
TO DEFENDANT LIMESTONE BANK**

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 33.01, Plaintiff submits the following First Set of Interrogatories to Defendant and requests that Defendant answer and respond in writing thereto within 45 days of the service hereof and under oath as is required.

**DEFINITIONS**

As used herein, the following terms have the following meanings:

1. "Communication" means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. "Defendant" or "You" means Limestone Bank, Inc., and includes any and all predecessors or successors in interest, local, regional, national, and/or executive offices, divisions,



or affiliates (foreign and domestic), segments, or divisions thereof, any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, e-mails, text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body,



including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.

### **RELEVANT TIME PERIOD**

All requests herein refer to the period from June 1, 2006 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify all persons who have knowledge of the facts or circumstances regarding the subject matter of this lawsuit and, for each such person, describe the facts known to that person and identify all documents relating to those facts. Such persons should include but not be limited to all persons (a) who have knowledge of facts you will use in opposing a motion for class certification; (b) who have knowledge of the policies, practices, and procedures you employed concerning the manner or sequence in which your customers’ transactions were or are authorized or posted to their accounts; and (c) who have knowledge of the policies, practices, and procedures Limestone Bank employed concerning Overdraft Fees and NSF Fees.

#### **RESPONSE:**

#### **INTERROGATORY NO. 2:**

Identify each Overdraft Fee Limestone Bank assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the Overdraft Fee and state all facts that show the basis on which the account was deemed to have been subject to an Overdraft Fee.

For each item identified, also state:

- (a) the date and time Limestone Bank authorized the item;



- (b) the date and time Limestone Bank received the item;
- (c) the amount of available funds in the account being debited at the time the transaction was initiated and the manner in which Limestone Bank determined available funds;
- (d) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the manner in which you determined available funds;
- (e) the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds;
- (f) the date and time the item was debited from the account;
- (g) the amount by which the transaction overdrew the account; and
- (h) the date and time Limestone Bank received payment for an Overdraft Fee.

**RESPONSE:**

**INTERROGATORY NO. 3:**

Identify each NSF Fee Limestone Bank assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the NSF Fee and state all facts that show the basis on which the account was deemed to have been subject to an NSF Fee. For each item identified, also state:

- (a) Customer account number;
- (b) Posting date;
- (c) Transaction amount;

- (d) Transaction code;
- (e) Retry or repeat transaction indicator;
- (f) Transaction category;
- (g) The date and/or time an NSF Fee was charged to the account based on the transaction;
- (h) Fee amount;
- (i) Merchant name; and
- (j) Transaction description field.

**RESPONSE:**

**INTERROGATORY NO. 4:**

Describe with particularity all policies, practices or procedures Limestone Bank used, at any time during the Relevant Time Period, to determine the manner in which items are posted to customers' accounts, including, but not limited to, Limestone Bank's policies, practices or procedures to charge Limestone Bank customers Overdraft Fees, including Overdraft Fees on transactions authorized with sufficient available funds at the time of authorization. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedure.

**RESPONSE:**

**INTERROGATORY NO. 5:**

Describe with particularity all policies, practices, or procedures Limestone Bank used to





charge customers NSF Fees, including NSF Fees on items for which NSF Fees had already been assessed one or more times. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedures used during the Relevant Time Period.

**RESPONSE:**

**INTERROGATORY NO. 6:**

Identify all persons with knowledge of Limestone Bank's decisions concerning the creation, adoption, implementation, or proposal of any changes to each policy, practice, and procedure described in Interrogatories 4 and 5 above.

**RESPONSE:**

**INTERROGATORY NO. 7:**

If any policy, practice or procedure described in Interrogatories 4 and 5 above changed or if a change was considered but not adopted or implemented, explain in detail who was involved in considering, deciding to adopt, or implementing the change; when the change was made or considered; how the change was implemented internally and how Limestone Bank customers were notified; why Limestone Bank changed or considered changing the policy, practice, or procedure; and why Limestone Bank opted not to adopt or implement the proposed change, and identify all documents concerning the change.

**RESPONSE:**

**INTERROGATORY NO. 8:**

Explain in detail all actions Limestone Bank has taken to disclose or inform its account

holders of its policies, practices, and procedures concerning Overdraft Fees, NSF Fees, and how account holders can check their available balance on their checking account.

**RESPONSE:**

**INTERROGATORY NO. 9:**

On an annual basis for each year during the Relevant Time Period, state:

- (a) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions you assessed against your customers' accounts;
- (b) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions assessed against customers' accounts that you have forgiven, waived, reversed or otherwise not collected;
- (c) the number of your customers' accounts that have been assessed Overdraft Fees on electronic transactions initially authorized into a positive available balance;
- (d) Limestone Bank's total gross revenues from consumer banking operations;
- (e) Limestone Bank's total service fees on deposits;
- (f) the aggregate total dollar amount of NSF Fees assessed against Limestone Bank customers; and
- (g) the aggregate total dollar amount of NSF Fees assessed against Limestone Bank customers for "retry payments."

**RESPONSE:**

**INTERROGATORY NO. 10:**

Explain in detail how Limestone Bank determines whether to authorize a debit transaction



made on a customer's account. In the event an automated algorithm is used, describe in detail each factor considered by the algorithm and the weight ascribed to each such factor.

**RESPONSE:**

**INTERROGATORY NO. 11:**

Identify and describe the policy or procedures by which you have processed and posted or currently process and post pending items to your customers' checking accounts when calculating and displaying the balances of their checking accounts to your customers, the reason(s) for such policy or procedures, and whether such policy or procedures applied to all deposit accounts.

**RESPONSE:**

**INTERROGATORY NO. 12:**

Explain in detail the order in which you list items on your customers' account statements, your reason(s) for listing them in that order, and whether such ordering applied to all deposit accounts.

**RESPONSE:**

**INTERROGATORY NO. 13:**

Explain in detail the current and former policy or procedure by which Limestone Bank's internet or mobile banking service or application displays pending items to Limestone Bank customers' checking accounts and posted items to Limestone Bank customers' checking accounts.

**RESPONSE:**



**INTERROGATORY NO. 14:**

Identify and describe any documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning Limestone Bank's Overdraft or NSF Fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue projections.

**RESPONSE:**

Dated: May 3, 2023

By: /s/ Andrew Mize

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*Attorneys for Plaintiff and the Putative Class*

**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION  
TO DEFENDANT LIMESTONE BANK**

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 34.01, Plaintiff submits the following First Set of Requests for Production to Defendant and requests that Defendant produce the Documents and things described herein for inspection and copying within 45 days.

**DEFINITIONS**

As used herein the following terms have the following meanings:

1. "Communication" means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. "Defendant" or "You" means Limestone Bank, Inc., and includes any and all





predecessors or successors in interest, local, regional, national, and/or executive offices, divisions, or affiliates (foreign and domestic), segments, or divisions thereof, any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, electronic-mails (“e-mails”), text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not

be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body, including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.

### **RELEVANT TIME PERIOD**

All requests herein refer to the period from May 1, 2008 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce all Documents that concern any account of any type associated with Plaintiff, whether presently open or closed, including, but not limited to, any and all communications between Defendant and Plaintiff, and Documents sufficient to show all account activity in any such account.

#### **RESPONSE:**

#### **REQUEST FOR PRODUCTION NO. 2:**

Produce the account contract(s), disclosures, and all related Documents that Defendant contends govern any aspect of Plaintiff’s relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

#### **RESPONSE:**





**REQUEST FOR PRODUCTION NO. 3:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against an account held by Plaintiff, produce all Documents reflecting:

- (a) the date and time the transaction was initiated, authorized, and when you first received notice of the dollar amount of the transaction;
- (b) the amount of available funds in the account being debited at the time the transaction was initiated and the way you determined available funds;
- (c) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the way you determined available funds;
- (d) the amount of available funds in the account being debited at the time the transaction was authorized and the way you determined available funds;
- (e) the amount by which the transaction overdrew the account;
- (f) the date and time the Overdraft Fee was deducted from the account based on the transaction; and
- (g) the date and time Defendant received payment for the Overdraft Fee.

**RESPONSE:****REQUEST FOR PRODUCTION NO. 4:**

Produce all Documents concerning the specific criteria and dollar amounts upon which Defendant determined whether or not transactions would be authorized where such authorization would cause an overdraft, including, but not limited to: the ledger balance in the account, the available balance, the collected balance in the account, the historical frequency of overdrafts, the



historical total of overdrafts and Overdraft Fees, the dollar amount of the particular charge, the dollar amount per day, the consistency of deposits, and/or the existence of other accounts at Defendant.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 5:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to charge Defendant customers Overdraft Fees, including on transactions authorized with sufficient available funds at the time of authorization and Overdraft Fees caused as a result of the deduction of other Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 6:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to deduct Overdraft Fees from accounts immediately and prior to the availability of sufficient funds to pay them.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 7:**

Produce all Documents concerning all methods by which Defendant customers can obtain information on the available balance of their checking accounts.

**RESPONSE:**



**REQUEST FOR PRODUCTION NO. 8:**

Produce the account contracts and/or disclosures and all related Documents that Defendant contends govern any aspect of a checking account customer's relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 9:**

Produce all Documents that Defendant has provided to Defendant customers reflecting a schedule of fees, including, but not limited to, Overdraft Fees, for services. Include all notices or messages sent to Defendant customers regarding any revision or modification of such schedule of fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 10:**

Produce organizational charts sufficient to show the names, titles and positions of all Persons, departments, entities, divisions, subdivisions, affiliates, subsidiaries, agents and other Persons and entities that provide checking account and overdraft fee services to Defendant's customers, including, but not limited to, all Persons and entities involved in determining or assessing fees, operating your Hogan or RTS (or equivalent) system, or operating any debit card processing systems, and all Persons and entities with responsibilities pertaining to the storage and retention of written and electronic records related thereto.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 11:**

Produce exemplar copies of all advertisements and other marketing materials utilized by Defendant to promote Defendant checking accounts and overdraft services.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 12:**

Produce all Documents that refer or relate to market research, surveys, studies, analysis, and/or other consumer research or surveys conducted on the topic of debit cards or Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 13:**

Produce exemplar screen-by-screen depictions of the Defendant online or mobile banking interface displaying the appearance of authorized or pending transactions before and after they are posted to an account.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 14:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against a checking account, produce all Documents concerning the following data elements: customer account number; posting date; transaction amount; transaction code; available balance at the time of posting; ledger balance at the time of posting; recurring payment indicator; problem item indicator; negative authorization indicator; transaction category or type; the date and/or time an





Overdraft Fee was charged to the account based on the transaction; Overdraft Fee amount; the date and time the transaction was authorized; the amount authorized; and the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 15:**

For each transaction representing a refund of an Overdraft Fee credited to a checking account, produce all Documents concerning the customer account number; posting date; transaction amount; and transaction code.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 16:**

Produce all consumer complaints regarding the practices challenged in Plaintiff's complaint and all communications regarding the same.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 17:**

Produce all Documents that refer or relate to all methods by which Defendant customers can obtain information regarding resubmission of electronic payments through the ACH system.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 18:**

Produce Documents, including a general ledger, sufficient to reflect your quarterly and annual revenue, margins, and net income during the Relevant Time Period, including, without limitation, your revenue, margins and net income from fees and other non-interest charges, including, without limitation, your revenue, margins and net income from Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 19:**

Produce all Documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning Defendant fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue projections.

**RESPONSE:**

Dated: May 3, 2023

By: /s/ Andrew Mize  
Andrew Mize (Ky. Bar No. 94453)  
STRANCH, JENNINGS & GARVEY, PLLC  
223 Rosa L. Parks Avenue, Suite 200  
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Little Rock, AR 72201  
(501) 372-1300  
chris@yourattorney.com

*\*Pro hac vice applications forthcoming*

*Attorneys for Plaintiff and the Putative Class*



Case No. 23-CI-002712

**JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

PLAINTIFF

v. **DEFENDANT'S MOTION TO DISMISS THE COMPLAINT**

LIMESTONE BANK, INC.,

DEFENDANT

\* \* \* \* \*

COMES NOW Defendant Limestone Bank, Inc., a no longer in existence Kentucky Banking Corporation ("Limestone"), by and through its undersigned counsel, and moves to dismiss Plaintiff Robin Cooper's ("Cooper") Complaint pursuant to Local Rule of Procedure 401 and Kentucky Rule of Civil Procedure ("CR") 12.02 for insufficiency of process, insufficiency of service of process, and failure to join an indispensable party. CR 12.02(d), (e), (f). A proposed order is tendered herewith.

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE COMPLAINT**

**FACTUAL BACKGROUND**

On April 28, 2023, Articles of Merger were filed with the Kentucky Secretary of State for (1) the instant Defendant Limestone Bank, Inc., a Kentucky Banking Corporation, with and into Peoples Bank, an Ohio Chartered Commercial Bank<sup>1</sup> and (2) for Limestone Bancorp, Inc., a Kentucky Corporation, with and into Peoples Bancorp Inc., and Ohio Corporation.<sup>2</sup> Likewise, on the same day, merger certificates for the merger of Limestone into Peoples Bank<sup>3</sup> and Limestone Bancorp and Peoples Bancorp<sup>4</sup> were filed with the Ohio Secretary of State. According to the terms

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<sup>1</sup> Exhibit A.

<sup>2</sup> Exhibit B.

<sup>3</sup> Exhibit C.

<sup>4</sup> Exhibit D.

of these merger documents, Defendant Limestone and Limestone Bancorp, Inc. ceased to exist on April 30, 2023 at 11:58 p.m. Columbus, Ohio time.

However, on May 3, 2023, three days after Limestone was dissolved and ceased to exist, Plaintiff Cooper filed the pending Complaint on her behalf and on behalf of a proposed class action on behalf of all others similarly situated. The Complaint maintains that Limestone ostensibly engaged in a “practice of charging Overdraft Fees on what are referred to in [the] complaint as ‘Authorize Positive, Settle Negative Transactions,’ or ‘APSN Transactions.’” (Compl. ¶ 15). Cooper maintains that by allegedly charging APSN Transactions, Limestone was (1) breaching the her account contract agreement that controlled the relationship between them, including the warranty of good faith and fair dealing, (2) unjustly enriched Limestone at the expense of Plaintiff, and (3) violating the Kentucky Consumer Protection Act.

After the Complaint was filed, on May 24, 2023, the Jefferson Circuit Clerk issued a civil summons. This summons notes that Limestone is the named defendant. It also addresses the notification that a legal action has been filed against Limestone. The summons and complaint were apparently directed to Peoples Bank because of a memo line on the summons that indicated a related party: “Limestone Bank, Inc. d/b/a/ . . . Peoples Bank Ohio Co.”<sup>5</sup> Importantly, nothing about the Complaint itself indicates that Peoples Bank is the intended defendant or that the Plaintiff intended to name and serve Peoples Bank in relation to this litigation.

### **LEGAL STANDARD**

The Kentucky Rules of Civil Procedure provide:

Every defense . . . to a claim for relief in any pleading . . . shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may . . . be made by motion: . . . (d) insufficiency of process, (e) insufficiency of service of process, . . . and (g) failure to join a party under Rule 19.

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<sup>5</sup> Exhibit E.

With respect to sufficiency of process, the summons must “be issued in the name of the Commonwealth, be dated and signed by the clerk, contain the name of the court and the style and number of the action, and be directed to each defendant.” CR 4.02.

Further, service of a summons and complaint must be served upon a corporation “by serving an officer or managing agent thereof, . . . or an agent authorized by appointment or by law to receive service on its behalf.” CR 4.04(4).

CR 19.01 requires joinder of a person who is subject to service of process if “in [the party’s] absence compete relief cannot be accorded among those already parties” or if the party “claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may . . . as a practical matter impair or impede his ability to protect that interest.”

Finally, the Court’s “consideration of public records”—the corporate records and merger documents filed with the Kentucky and Ohio Secretaries of State—“attached to [this] motion to dismiss does not convert the motion to dismiss to one for summary judgment” because a trial court may consider public records in ruling on a CR 12.02 motion. *See Hamburg Props., LLC v. Gibson Co.*, No. 2021-CA-0165-MR, 2022 Ky. App. Unpub. LEXIS 102, at \*8 (Ct. App. Feb. 25, 2022) (citing *Netherwood v. Fifth Third Bank, Inc.*, 514 S.W.3d 558, 563-64 (Ky. App. 2017) (“[O]rdinarily a trial court’s consideration of items outside the pleadings would convert the motion to dismiss to one for summary judgment; however, consideration of public records attached to pleadings does not convert a motion to dismiss for failure to state a claim to a motion for summary judgment.”)).

### **ARGUMENT**

The Court should dismiss the Complaint because the three requirements noted above are not satisfied. It is well established that the proper party to an action must be named and served



with process. *See Mulligan v. First Nat'l Bank & Trust Co.*, 351 S.W.2d 59 (Ky. 1961). Moreover, as “the master of his or her complaint . . . a [plaintiff is] solely responsible for naming the proper parties in the complaint.” *Bradley v. Commonwealth ex rel. Cameron*, 653 S.W.3d 870, 879 (Ky. 2022). Moreover, even where the merits of the action may support a claim for relief, courts “may not grant plaintiff the relief sought [in] the absence of an indispensable party.” *Treadway v. Russell*, 299 S.W.2d 245, 245 (Ky. Ct. Ap. 1957).

Here, Cooper named Limestone, an inactive Kentucky corporation that no longer exists, and which ceased to exist by operation of law when it merged into Peoples Bank prior to the lawsuit being filed. Cooper, however, failed to name Peoples Bank, the only proper defendant, as a party to this lawsuit. This further resulted in insufficient process. The summons issued by the clerk is directed to Limestone Bank, Inc.<sup>6</sup> Accordingly, Peoples Bank has not been served with a copy of a summons directed to it as required by CR 4.01.

Importantly, if Cooper was seeking to serve Limestone with the summons and complaint, service should have been made on a corporate representative of Limestone. However, as noted above, Limestone has been dissolved there are no longer officers or registered agents of the corporation.

Moreover, Peoples Bank, Inc., pursuant to the terms of the merger, has an interest in this litigation but was not named as a party and has yet to be served with a summons signed by the clerk directed to it. Under the standard provided by CR 19.01, Peoples Bank is an indispensable party inasmuch as any disputes cannot be resolved by Limestone as it is no longer in existence. Further, Peoples Bank has an interest in the litigation and failure for it to join the litigation would seriously impair its ability to defend that interest.

---

<sup>6</sup> Exhibit E.

**CONCLUSION**

For the reasons set forth above, the Court should dismiss the Complaint.

Respectfully submitted,

/s/ C. Anne Stewart

Joseph N. Tucker

C. Anne Stewart

DINSMORE & SHOHL LLP

101 South Fifth Street, Suite 2500

Louisville, KY 40202

Telephone (502) 540-2300

Facsimile (502) 585-2207

joseph.tucker@dinsmore.com

annie.stewart@dinsmore.com

*Counsel for Defendant Limestone Bank, Inc.*

**CERTIFICATE OF SERVICE**

It is hereby certified that on the 16th of June, 2023, a copy of the foregoing was filed through the Court's e-filing system and sent to the following:

Andrew Mize (Ky. Bar No. 94453)  
STRANCH, JENNINGS & GARVEY, PLLC  
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Christopher D. Jennings  
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chris@yourattorney.com

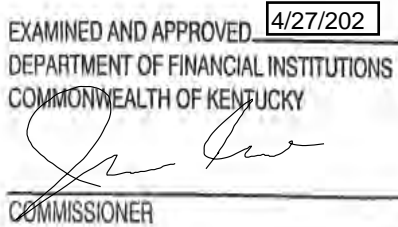
*Counsel for Plaintiff and the Putative Class*

/s/ C. Anne Stewart  
*Counsel for Defendant Limestone Bank, Inc.*

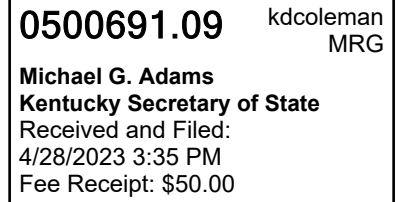


# EXHIBIT

# A



ARTICLES OF MERGER  
 OF  
 LIMESTONE BANK, INC.,  
 A KENTUCKY BANKING CORPORATION,  
 WITH AND INTO  
 PEOPLES BANK,  
 AN OHIO CHARTERED COMMERCIAL BANK



Pursuant to the provisions of KRS 271B.11-010 *et. seq.* of the Kentucky Business Corporation Act (the “KBCA”), Limestone Bank, Inc., a Kentucky banking corporation, and Peoples Bank, an Ohio chartered commercial bank, desiring to effect a merger (the “Merger”), hereby adopt the following Articles of Merger:

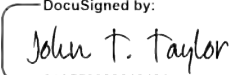
1. The names of the parties to the merger are Limestone Bank, Inc. and Peoples Bank. The name of the surviving corporation is Peoples Bank, doing business in the state of Kentucky under the name Peoples Bank Ohio Co. (the “Surviving Bank”). The name of the corporation not surviving the Merger is Limestone Bank, Inc. (the “Merging Bank”).
2. Attached as Exhibit A hereto and incorporated herein by reference is the Agreement and Plan of Merger entered into between Merging Bank and Surviving Bank, dated as of October 24, 2022 (the “Plan of Merger”), which sets out the terms and conditions of the Merger including the manner and basis of converting and cancelling shares in the Merger.
3. The Plan of Merger was approved by resolution adopted by the written consent of the sole shareholder of Surviving Bank pursuant to which all of the shares of the Surviving Bank entitled to vote on the Plan of Merger (consisting of 10,000 outstanding shares of common stock, with each share entitled to one vote) approved the Plan of Merger. The number of votes cast for the Plan of Merger by the sole shareholder pursuant to the written consent was sufficient for approval of the Plan of Merger.
4. The Plan of Merger was approved by resolution adopted by the written consent of the sole shareholder of Merging Bank pursuant to which all of the shares of Merging Bank entitled to vote on the Plan of Merger (consisting of 1,000 outstanding shares of common stock, with each share entitled to one vote) approved the Plan of Merger. The number of votes cast for the Plan of Merger by the sole shareholder pursuant to the written consent was sufficient for approval of the Plan of Merger.
5. The effective time and date of these Articles of Merger shall be April 30, 2023 at 11:59 p.m. Columbus, Ohio time.
6. No changes are to be made to the Surviving Bank’s Articles of Incorporation.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the parties hereto has caused these Articles of Merger to be executed by an authorized individual.

April 28, 2023

LIMESTONE BANK, INC.

DocuSigned by:  
  
By: 31A55039061249A  
Name: John T. Taylor  
Title: President and Chief Executive Officer

PEOPLES BANK

By: \_\_\_\_\_  
Name: Charles W. Sulerzyski  
Title: President and Chief Executive Officer

*[Signature page to Bank Articles of Merger]*



IN WITNESS WHEREOF, each of the parties hereto has caused these Articles of Merger to be executed by an authorized individual.

April 28, 2023

LIMESTONE BANK, INC.

By: \_\_\_\_\_  
Name: John T. Taylor  
Title: President and Chief Executive Officer

PEOPLES BANK

By: Charles W. Sulerzyski  
Name: Charles W. Sulerzyski  
Title: President and Chief Executive Officer

*[Signature page to Bank Articles of Merger]*

**EXHIBIT A**  
**AGREEMENT AND PLAN OF MERGER**

See attached.

## **FORM OF AGREEMENT AND PLAN OF MERGER**

This is an Agreement and Plan of Bank Merger (this “Agreement”) dated as of October 24, 2022, between Peoples Bank, an Ohio-chartered commercial bank organized under the laws of the State of Ohio, being located in Marietta, county of Washington, in the State of Ohio (“Peoples Bank”), and Limestone Bank, Inc., a Kentucky commercial bank, being located in Louisville, county of Jefferson, in the State of Kentucky (“Limestone Bank”).

### **RECITALS**

A. Peoples Bancorp Inc., an Ohio corporation owning all of the outstanding shares of Peoples Bank (“Peoples”), and Limestone Bancorp, Inc., a Kentucky corporation owning all of the outstanding shares of Limestone Bank (“Limestone Bancorp”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), dated October 24, 2022, pursuant to which Limestone Bancorp will merge with and into Peoples, with Peoples being the surviving corporation (“Parent Merger”).

B. The Merger Agreement contemplates that immediately following the consummation of the Parent Merger, or at such later time as Peoples may determine, Limestone Bank is to be merged with and into Peoples Bank.

C. Peoples, as the sole shareholder of Limestone Bank and Peoples Bank immediately after consummation of the Parent Merger, desires to cause Limestone Bank to merge with and into Peoples Bank immediately following the Parent Merger or at such later time as Peoples may determine (the “Limestone Bank Merger”).

D. In consideration of the recitals and the mutual agreements, covenants and undertakings contained herein and for the purpose of setting forth the terms and conditions of the Limestone Bank Merger, the parties, intending to be legally bound, agree as follows:

### **AGREEMENTS**

1. Limestone Bank Merger. At the Effective Time (as hereinafter defined) and upon the terms and conditions set forth in this Agreement, Limestone Bank shall be merged with and into Peoples Bank, and Peoples Bank shall continue in existence as the surviving corporation of the merger (the “Surviving Bank”).

2. Merger Certificates. Subject to consummation of the Parent Merger and the other provisions of this Agreement, immediately after the Parent Merger or at such later time as Peoples may determine, and upon receipt of all required shareholder and regulatory approvals, Peoples Bank and Limestone Bank shall cause such certificates or articles of merger and such other documents and certificates as are



necessary to be executed and delivered for filing to the Ohio Secretary of State and the Kentucky Secretary of State ("Merger Certificates").

3. Effective Time. The date and time specified in the Merger Certificates filed with the Ohio Secretary of State and the Kentucky Secretary of State shall be deemed the effective time of the Limestone Bank Merger (the "Effective Time").

4. Articles of Incorporation and Regulations. The Articles of Incorporation of Peoples Bank, as in effect at the Effective Time, shall be the Articles of Incorporation of the Surviving Bank, until they shall be thereafter altered, amended, or repealed in accordance with law. Until amended or repealed as therein provided, the Regulations of Peoples Bank in effect at the Effective Time shall be the Regulations of the Surviving Bank.

5. Directors and Officers. The directors and officers of Peoples Bank shall be the directors and officers of the Surviving Bank until the next annual meeting of shareholders and directors of Surviving Bank, unless their tenure as officers or directors is sooner terminated.

6. Names and Offices. The name of the Surviving Bank shall be "Peoples Bank." The main office of the Surviving Bank shall be the main office of Peoples Bank immediately prior to the Effective Time. All branch offices of Peoples Bank and offices of Limestone Bank which were in lawful operation immediately prior to the Effective Time shall be the branch offices of the Surviving Bank upon consummation of the Limestone Bank Merger, subject to the opening or closing of any offices which may be authorized by Peoples Bank or Limestone Bank and applicable regulatory authorities after the date hereof.

7. Conversion of Limestone Bank Shares. At the Effective Time, each issued and outstanding share of Limestone Bank capital stock shall automatically by virtue of the Limestone Bank Merger be canceled without payment.

8. Peoples Bank Capital Stock. The shares of Peoples Bank capital stock issued and outstanding immediately prior to the Effective Time shall remain outstanding and shall not be affected by the Limestone Bank Merger.

9. Certain Effects of Merger. At the Effective Time, in addition to the effects otherwise provided by the laws of the United States, Ohio and Kentucky, Peoples Bank and Limestone Bank shall become a single corporation and the separate existence of Limestone Bank shall cease. Surviving Bank shall possess all the rights, privileges, powers and franchises of both a public and private nature of Limestone Bank subject to all of its restrictions, disabilities and duties, and shall also possess all of the property (real, personal and mixed) and all debts due to Limestone Bank. All other things or belonging to Limestone Bank shall be vested in the Surviving Bank; and all property, rights, privileges, powers and franchises and all and every other interest shall thereafter be the property of the Surviving Bank, and the title to any real estate vested by deed or otherwise in Limestone Bank shall not revert or be in any way impaired by reason of the Limestone Bank Merger. All rights of creditors and all liens of Limestone Bank shall be preserved unimpaired, and all debts, liabilities and duties of Limestone Bank shall at the

Effective Time become obligations of the Surviving Bank and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

10. Termination. This Agreement shall be terminated upon the agreement of the parties hereto. In addition, this Agreement shall terminate automatically upon termination of the Merger Agreement prior to the consummation of the Parent Merger.

11. Conditions. The respective obligations of each party hereto to effect the Limestone Bank Merger shall be subject to: (a) the consummation of the Parent Merger; and (b) the receipt of all approvals and consents of regulatory authorities required by law to effect the Limestone Bank Merger.

12. Amendment. On or before the Effective Time, the parties may amend, modify or supplement this Plan of Merger in the manner as may be agreed upon between the parties in writing.

13. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts (including by facsimile or other electronic means), each of which shall be deemed to be an original but all of which together shall constitute one agreement.

14. Governing Law. This Agreement shall be governed in all respects by the laws of the State of Ohio.

15. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party that is entitled to the benefit thereof.

16. Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of the other party.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

**PEOPLES BANK**

**LIMESTONE BANK, INC.**

By: Charles W. Sulerzyski  
Charles W. Sulerzyski, President  
and Chief Executive Officer

By: \_\_\_\_\_  
John T. Taylor, President  
and Chief Executive Officer

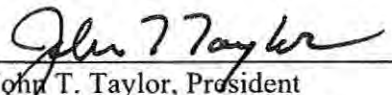


IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

**PEOPLES BANK**

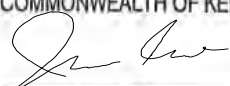
**LIMESTONE BANK, INC.**

By: \_\_\_\_\_  
Charles W. Sulerzyski, President  
and Chief Executive Officer

By:   
John T. Taylor, President  
and Chief Executive Officer

# EXHIBIT

# B

EXAMINED AND APPROVED 4/23/2023  
 DEPARTMENT OF FINANCIAL INSTITUTIONS  
 COMMONWEALTH OF KENTUCKY  
  
 COMMISSIONER

ARTICLES OF MERGER  
 OF  
 LIMESTONE BANCORP, INC.,  
 A KENTUCKY CORPORATION,  
 WITH AND INTO  
 PEOPLES BANCORP INC.,  
 AN OHIO CORPORATION

**0239852.09** kdcoleman  
 MRG  
**Michael G. Adams**  
**Kentucky Secretary of State**  
 Received and Filed:  
 4/28/2023 3:32 PM  
 Fee Receipt: \$50.00

Pursuant to the provisions of KRS 271B.11-010 *et. seq.* of the Kentucky Business Corporation Act (the “KBCA”), Limestone Bancorp, Inc., a Kentucky corporation, and Peoples Bancorp Inc., an Ohio corporation, desiring to effect a merger (the “Merger”), hereby adopt the following Articles of Merger:

1. The names of the parties to the Merger are Limestone Bancorp, Inc. and Peoples Bancorp Inc. The name of the surviving corporation is Peoples Bancorp Inc. In these Articles of Merger, Peoples Bancorp Inc. is referred to as the “Surviving Company” and Limestone Bancorp, Inc. is referred to as the “Merging Company”.
2. Attached as Exhibit A hereto and incorporated herein by reference is the Agreement and Plan of Merger entered into between Merging Company and Surviving Company dated as of October 24, 2022 (the “Plan of Merger”) which sets out the terms and conditions of the Merger including the manner and basis of converting shares in the Merger.
3. Surviving Company has 50,000,000 shares of common stock authorized and 50,000 shares of preferred stock authorized, of which 28,287,837 shares of common stock were issued and outstanding and no shares of preferred stock were issued and outstanding and entitled to vote on the Plan of Merger. Each share of Surviving Company common stock was entitled to one vote on the Plan of Merger. There was no other voting group entitled to vote on the Plan of Merger. The Plan of Merger was approved by the vote of the holders of common stock at a special meeting of the shareholders. The holders of common stock cast 18,366,749 votes for the Plan of Merger and 240,437 votes against the Plan of Merger or abstaining from the vote. The number of votes cast for the Plan of Merger was sufficient for approval of the Plan of Merger.
4. Merging Company has 28,000,000 common shares authorized, 10,000,000 non-voting common shares authorized and 1,000,000 preferred shares authorized, of which 6,683,633 common shares, 1,000,000 non-voting common shares and no preferred shares were issued and outstanding and entitled to vote on the Plan of Merger. Each common share of Merging Company and each non-voting common share of Merging Company was entitled to one vote on the Plan of Merger. The common shares of the Merging Company and the non-voting common shares of the Merging Company were each entitled to vote on the Plan of Merger as a separate voting group. There was no other voting group entitled to vote on the Plan of Merger. The Plan of Merger was approved by the vote of the holders of common shares and non-voting common shares at a special meeting of the shareholders. The holders of common shares cast 4,960,861 votes for the Plan of Merger and 1,677,772 votes against the Plan of Merger or abstaining from the vote. The holders of non-voting common shares cast 1,000,000 votes for the Plan of Merger and no votes against the Plan of Merger. The number of votes cast for the Plan of Merger by each voting group was sufficient for approval of the Plan of Merger.
5. The effective time and date of these Articles of Merger shall be April 30, 2023 at 11:58 p.m. Columbus, Ohio time.



6. No changes are to be made to the Surviving Company's Articles of Incorporation.

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IN WITNESS WHEREOF, each of the parties hereto has caused these Articles of Merger to be executed by an authorized individual.

April 28, 2023

LIMESTONE BANCORP, INC.

By: \_\_\_\_\_  
Name: John T. Taylor  
Title: President and Chief Executive Officer

PEOPLES BANCORP INC.

By: Charles W. Sulerzyski  
Name: Charles W. Sulerzyski  
Title: President and Chief Executive Officer

*[Signature page to Articles of Merger]*

**EXHIBIT A**  
**AGREEMENT AND PLAN OF MERGER**

See attached.



**AGREEMENT AND PLAN OF MERGER**

dated as of

**October 24, 2022**

by and between

**PEOPLES BANCORP INC.**

and

**LIMESTONE BANCORP, INC.**

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EXHIBIT A      Form of Support Agreement

EXHIBIT B      Form of Subsidiary Bank Merger Agreement

## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT AND PLAN OF MERGER**, dated as of October 24, 2022 (this “Agreement”), by and between **PEOPLES BANCORP INC.**, an Ohio corporation (“Peoples”), and **LIMESTONE BANCORP, INC.**, a Kentucky corporation (“Limestone”).

### WITNESSETH

**WHEREAS**, Peoples is a registered financial holding company under the Banking Holding Company Act of 1956, as amended (“BHCA”) and owns all of the outstanding shares of Peoples Bank, an Ohio-chartered commercial bank (“Peoples Bank”);

**WHEREAS**, Limestone is a registered bank holding company under the BHCA and owns all of the outstanding shares of Limestone Bank, Inc., a Kentucky banking corporation (“Limestone Bank”);

**WHEREAS**, the Boards of Directors of Peoples and Limestone believe that the merger of Limestone with and into Peoples, followed by the subsidiary bank merger of Limestone Bank with and into Peoples Bank, each in accordance with the terms and subject to the conditions of this Agreement, would be in the best interests of the shareholders of Peoples and Limestone;

**WHEREAS**, the Boards of Directors of Peoples and Limestone have each approved this Agreement and the transactions contemplated hereby;

**WHEREAS** the parties intend their merger to qualify as a “reorganization” within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the “Code”), and that this Agreement is intended to be and is adopted as a “plan of reorganization” for purposes of Sections 354 and 361 of the Code;

**WHEREAS**, as an inducement for Peoples to enter into this Agreement, the directors of Limestone and the holder of all of the outstanding Non-Voting Common Shares of Limestone have entered into Support Agreements with Peoples (the “Support Agreements”), each dated as of the date of this Agreement, in the case of directors in the form attached to this Agreement as Exhibit A, pursuant to which such directors and shareholder have agreed, among other matters, to vote all of the shares of Limestone Common Stock beneficially owned by them in favor of the Merger upon the terms and subject to the conditions set forth in the Support Agreements; and

**WHEREAS**, the parties also desire to provide in this Agreement for certain undertakings, conditions, representations, warranties and covenants in connection with the transactions contemplated by this Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants, representations, warranties and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Peoples and Limestone hereby agree as follows:



## ARTICLE I

### Certain Definitions

1.01 *Certain Definitions.* The following terms are used in this Agreement with the meanings set forth below:

“Acceptance of Superior Proposal” has the meaning set forth in Section 6.06(d).

“Acquisition Proposal” has the meaning set forth in Section 6.06(f)(ii).

“Acquisition Transaction” has the meaning set forth in Section 6.06(f)(iii).

“Affiliate” or “Affiliates” has the meaning set forth in Rule 12b-2 under the Exchange Act.

“Agreement” means this Agreement, as amended or modified from time to time in accordance with Section 9.02.

“Associate” has the meaning set forth in Rule 12b-2 under the Exchange Act.

“BHCA” has the meaning set forth in the Recitals to this Agreement.

“CARES Act Modified Loan” has the meaning set forth in Section 5.01(u)(vii).

“CARES Act” has the meaning set forth in Section 5.01(u)(vii).

“Chosen Courts” has the meaning set forth in Section 9.06.

“Closing” has the meaning set forth in Section 2.04.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Code” has the meaning set forth in the Recitals to this Agreement.

“Compensation and Benefit Plans” has the meaning set forth in Section 5.01(l)(i).

“Consultants” has the meaning set forth in Section 5.01(l)(i).

“Data Conversion” has the meaning set forth in Section 6.12.

“Debentures” means, as it relates to Limestone, (i) the floating rate (3-month LIBOR + 2.85%) junior subordinated debentures due February 13, 2034 under the Ascencia Statutory Trust I, (ii) the floating rate (3-month LIBOR + 2.85%) junior subordinated debentures due February 13, 2034 under the Porter Statutory Trust II, (iii) the floating rate (3-month LIBOR + 2.79%) junior subordinated debentures due April 15, 2034 under the Porter Statutory Trust III, and (iv) the floating rate (3-month LIBOR + 1.67%) junior subordinated debentures due March 1, 2037 under the Porter Statutory Trust IV.

“Determination Date” has the meaning set forth in Section 8.01(g).

“Determination Letter” has the meaning set forth in Section 6.10(c).

“Directors” has the meaning set forth in Section 5.01(l)(i).

“Dissenting Shares” has the meaning set forth in Section 3.01(d).

“Effective Date” means the date on which the Effective Time occurs.

“Effective Time” means the effective time of the Parent Merger, as provided for in Section 2.03.

“Employees” has the meaning set forth in Section 5.01(l)(i).

“Environmental Laws” means all applicable local, state and federal environmental, health and safety laws and regulations, including, without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, the Federal Clean Air Act, and the Occupational Safety and Health Act, each as amended, regulations promulgated thereunder, and state counterparts.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” has the meaning set forth in Section 5.01(l)(iii).

“ERISA Affiliate Plan” has the meaning set forth in Section 5.01(l)(iii).

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder.

“Exchange Agent” has the meaning set forth in Section 3.02(a).

“Exchange Fund” has the meaning set forth in Section 3.02(a).

“Exchange Ratio” shall mean 0.90.

“FDIA” means the Federal Deposit Insurance Act, as amended.

“FDIC” means the Federal Deposit Insurance Corporation.

“Final Index Price” has the meaning set forth in Section 8.01(g).

“FRB” means the Board of Governors of the Federal Reserve System.

“GAAP” means generally accepted accounting principles in the United States, consistently applied.

“Governmental Authority” means any court, arbitration panel, administrative agency or commission or other federal, state or local governmental authority or instrumentality (including, without limitation, any Regulatory Authority).

“Group” has the meaning set forth in Section 13(d) under the Exchange Act.

“Hazardous Materials” means, collectively, (a) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended, and regulations promulgated thereunder, (b) any “hazardous waste” as defined by the Resource Conservation and Recovery Act, as amended through the date hereof, or regulations promulgated thereunder, and (c) any pollutant or contaminant or hazardous, dangerous or toxic chemical, material or substance within the meaning of any applicable federal, state or local law relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material.

“IBP 1” has the meaning set forth in Section 6.24(a).

“IBP 2” has the meaning set forth in Section 6.24(a).

“Index” has the meaning set forth in Section 8.01(g).

“Index Ratio” has the meaning set forth in Section 8.01(g).

“Initial Index Price” has the meaning set forth in Section 8.01(g).

“Information” has the meaning set forth in Section 6.16.

“IRS” has the meaning set forth in Section 5.01(l)(ii).

“Joint Proxy Statement/Prospectus” has the meaning set forth in Section 5.01(d)(i).

“KBCA” means the Kentucky Business Corporation Act, Chapter 271B of the Kentucky Revised Statutes, as amended.

“Kentucky Title Center” has the meaning set forth in Section 6.24(b).

“KDFI” means the Kentucky Department of Financial Institutions.

“KTC Divestiture” has the meaning set forth in Section 6.24(b).

“Knowledge” means, with respect to Peoples, the Knowledge of any officer of Peoples and Peoples Bank with the title of Chief Executive Officer, President, Director of Risk Management or Chief Financial Officer, and, with respect to Limestone and Limestone Bank, the Knowledge of any officer of Limestone and Limestone Bank with the title of Chief Executive Officer, President, Chief Financial Officer, Chief Credit Officer or Director of Risk Management. An officer of Peoples or Limestone shall be deemed to have “Knowledge” of a particular fact or matter if such officer is actually aware of such fact or matter or a prudent individual would be reasonably expected to discover or otherwise become aware of such fact or matter in the ordinary course of such officer’s duties.

“KSS” means Secretary of State of the Commonwealth of Kentucky.

“Lien” means any charge, mortgage, pledge, security interest, restriction, claim, lien, or other encumbrance.

“Limestone” has the meaning set forth in the Preamble to this Agreement.

“Limestone 401(k) Plan” has the meaning set forth in Section 6.10(c).

“Limestone Articles” means the Amended and Restated Articles of Incorporation of Limestone, as amended.

“Limestone Bank” has the meaning set forth in the Preamble to this Agreement.

“Limestone Board” means the Board of Directors of Limestone.

“Limestone Bylaws” means the bylaws of Limestone, as amended.

“Limestone Common Stock” means the shares of (i) Common Shares, with no par value, and (ii) Non-Voting Common Shares, with no par value, of Limestone.

“Limestone Disclosure Schedule” has the meaning set forth in Section 5.01.

“Limestone Group” has the meaning set forth in Section 5.01(p)(vii).

“Limestone Insiders” has the meaning set forth in Section 6.20.

“Limestone Meeting” has the meaning set forth in Section 5.01(d)(i).

“Limestone Omnibus Equity Compensation Plan” means Limestone Bancorp, Inc. 2018 Omnibus Equity Compensation Plan.

“Limestone Preferred Shares” has the meaning set forth in Section 5.01(b)(i).

“Limestone Recommendation” has the meaning set forth in Section 6.02(b).

“Limestone Shares” has the meaning set forth in Section 5.01(b)(i).

“Limestone’s SEC Reports” has the meaning set forth in Section 5.01(e)(ii).

“Limestone’s Territory” means, for purposes of this Agreement, the geographic area comprising the Commonwealth of Kentucky.

“Loan” or “Loans” means any loans, loan commitments, letters of credit, credit facility, credit enhancements or any other extensions of credit (including any amendments, renewals, extensions or modifications thereto).

“Material Adverse Effect” means, with respect to a party, as the context may require, any effect, change, event, circumstance, condition, occurrence or development



that, either individually or in the aggregate, (i) has been or would reasonably be likely to be (a) material and adverse to the business, properties, assets, liabilities, results of operations or financial condition of Peoples and its Subsidiaries, taken as a whole, or (b) material and adverse to the business, properties, assets, liabilities, results of operations or financial condition of Limestone and its Subsidiaries, taken as a whole, or (ii) would reasonably be likely to materially impair the ability of either Peoples or Limestone to perform its obligations under this Agreement or otherwise materially threaten or materially impede the consummation of the Merger and the other transactions contemplated by this Agreement; provided, however, that Material Adverse Effect shall not be deemed to include the impact of (a) changes, after the date hereof, in GAAP or applicable bank regulatory accounting requirements; (b) changes, after the date hereof, in laws, rules or regulations (including the Pandemic Measures) of general applicability to companies in the industries in which the party and its Subsidiaries operate, or interpretations thereof by courts or Governmental Authorities; (c) changes, after the date hereof, in global, national or regional political conditions (including the outbreak of war or acts of terrorism) or in economic or market (including equity, credit and debt markets, as well as changes in interest rates) conditions affecting the financial services industry generally and not specifically relating to the party or its Subsidiaries (including any such changes arising out of the Pandemic or any Pandemic Measures); (d) changes, after the date hereof, resulting from hurricanes, earthquakes, tornados, floods or other natural disasters or from any outbreak of any disease or other public health event (including the Pandemic); (e) public disclosure of the execution of this Agreement, or (except in the case of the representations contained in Sections 5.01(c)(ii), 5.01(d), 5.02(d)(ii) and 5.02(e)) consummation of the transactions contemplated hereby (including any effect on a party's relationships with its customers or employees) or actions expressly required by this Agreement in contemplation of the transactions contemplated hereby; and (f) the occurrence of any natural or man-made disaster; except, with respect to subclauses (a), (b), (c), (d) and (f), to the extent that the effects of the change are materially disproportionately adverse to the business, properties, assets, liabilities, results of operations or financial condition of the party and its Subsidiaries, taken as a whole, as compared to other companies in the industry and geographic area in which the party and its Subsidiaries operate.

"Material Contracts" has the meaning set forth in Section 5.01(j)(ii).

"Merger" collectively refers to the Parent Merger and the Subsidiary Bank Merger, as set forth in Sections 2.01 and 2.05.

"Merger Consideration" has the meaning set forth in Section 3.01(a).

"Notifying Party" has the meaning set forth in Section 6.11(a).

"NASDAQ" has the meaning set forth in Section 3.02(b)(v).

"New Certificates" has the meaning set forth in Section 3.02(a).

"Notice Period" has the meaning set forth in Section 6.06(d)(ii).

"Old Certificate" has the meaning set forth in Section 3.01(b).

“OGCL” means the Ohio General Corporation Law, Chapter 1701 of the Ohio Revised Code, as amended.

“OSS” means the Office of the Secretary of State of the State of Ohio.

“Other Subsidiaries Dissolutions” has the meaning set forth in Section 6.24(a).

“Pandemic” means any outbreaks, epidemics or pandemics relating to SARS-CoV-2 or COVID-19, or any evolutions, variants or mutations thereof, or any other viruses (including influenza), and the governmental and other responses thereto.

“Pandemic Measures” means any quarantine, “shelter in place”, “stay at home”, workforce reduction, reduced capacity, social distancing, shut down, closure, sequester or other directives, guidelines, executive orders, mandates or recommendations promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, in connection with or in response to the Pandemic.

“Parent Merger” has the meaning set forth in Section 2.01(a).

“PBGC” means the Pension Benefit Guaranty Corporation.

“PBIB Corporation” has the meaning set forth in Section 6.24(a).

“PBI Title” has the meaning set forth in Section 6.24(a).

“Pension Plan” has the meaning set forth in Section 5.01(l)(ii).

“Peoples” has the meaning set forth in the Preamble to this Agreement.

“Peoples Articles” means the Articles of Incorporation of Peoples, as amended.

“Peoples Bank” has the meaning set forth in the Recitals to this Agreement.

“Peoples Board” means the Board of Directors of Peoples.

“Peoples Board Deferred Compensation Plan” means the Third Amended and Restated Deferred Compensation Plan for Directors of Peoples and its Subsidiaries, as amended.

“Peoples Common Shares” means shares of common stock, without par value, of Peoples.

“Peoples Common Share Closing Price” has the meaning set forth in Section 3.02(b)(v).

“Peoples Disclosure Schedule” has the meaning set forth in Section 5.02.

“Peoples Equity Plan” means the Peoples’ Third Amended and Restated 2006 Equity Plan, as amended.

“Peoples Market Price” has the meaning set forth in Section 8.01(g).

“Peoples Market Value” has the meaning set forth in Section 8.01(g).

“Peoples Meeting” has the meaning set forth in Section 5.01(d)(i).

“Peoples Recommendation” has the meaning set forth in Section 6.02(c).

“Peoples Regulations” means the regulations of Peoples, as amended.

“Peoples’ SEC Reports” has the meaning set forth in Section 5.02(f)(ii).

“Person” means any individual, corporation (including not-for-profit), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, Governmental Entity or other entity of any kind or nature.

“Phase I” has the meaning set forth in Section 6.19.

“Registration Statement” has the meaning set forth in Section 5.01(d)(i).

“Regulatory Authorities” or “Regulatory Authority” has the meaning set forth in Section 5.01(h)(i).

“Regulatory Order” has the meaning set forth in Section 5.01(h)(i).

“Related Parties” has the meaning set forth in Section 5.01(bb).

“Related Party Agreements” has the meaning set forth in Section 5.01(bb).

“Representatives” means, with respect to any Person, such Person’s directors, officers, employees, legal or financial advisors or any representatives of such legal or financial advisors.

“Requisite Peoples Vote” has the meaning set forth in Section 5.02(d)(i).

“Requisite Limestone Vote” has the meaning set forth in Section 5.01(c)(i).

“Rights” means, with respect to any Person, securities or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, or any options, calls or commitments relating to, or any stock appreciation right or other instrument the value of which is determined in whole or in part by reference to the market price or value of, shares of capital stock of such Person.

“Sarbanes-Oxley Act” has the meaning set forth in Section 5.01(e)(ii).

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations thereunder.

“Subordinated Capital Notes” means, as it relates to Limestone, \$25 million in 5.75% fixed-to-floating rate subordinated notes issued under an Indenture, dated July 23, 2019, by and between Limestone and Wilmington Trust, National Association, as trustee, as supplemented by that certain Authentication Order of Limestone, dated July 31, 2020.

“Subsidiary” has the meanings ascribed to it in Section 2(d) of the BHCA.

“Subsidiary Bank Merger” has the meaning set forth in Section 2.05(a).

“Subsidiary Bank Merger Agreement” has the meaning set forth in Section 2.05(a).

“Subsidiary Bank Merger Certificates” has the meaning set forth in Section 2.05(b).

“Superior Proposal” has the meaning set forth in Section 6.06(f)(i).

“Support Agreements” has the meaning set forth in the Recitals to this Agreement.

“Surviving Corporation” has the meaning set forth in Section 2.01(a).

“Takeover Laws” has the meaning set forth in Section 5.01(n).

“Tax” and “Taxes” means all federal, state, local or foreign taxes, charges, fees, levies or other assessments, however denominated, including, without limitation, all net income, gross income, commercial activity, gains, gross receipts, sales, use, ad valorem, goods and services, capital, production, transfer, franchise, windfall profits, license, withholding, payroll, employment, disability, employer health, excise, estimated, severance, stamp, occupation, property, environmental, unemployment and all other taxes, custom duties, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts imposed by any taxing authority whether arising before, on or after the Effective Date and any transferee liability in respect of any such items.

“Tax Returns” means any return, amended return, statement, form, claim for refund or other report (including elections, declarations, disclosures, schedules, estimates and information returns) with respect to any Tax, including any amendments thereof.

“Tail Policy” has the meaning set forth in Section 6.18(b).

“Termination Fee” has the meaning set forth in Section 8.02(b)(i).

“Third Party System” has the meaning set forth in Section 5.01(y).

“Treasury” means the United States Department of Treasury.



“Treasury Shares” means Limestone Shares held by Limestone or any of its Subsidiaries other than in a fiduciary or agency capacity or as a result of debts previously contracted in good faith.

## ARTICLE II The Merger

### 2.01 *The Parent Merger.*

(a) *The Parent Merger.* Upon the terms and subject to the conditions of this Agreement, at the Effective Time, Limestone shall merge with and into Peoples (the “Parent Merger”), Peoples shall survive the Parent Merger and continue to exist as an Ohio corporation (Peoples, as the surviving corporation in the Parent Merger, is sometimes referred to herein as the “Surviving Corporation”), and the separate corporate existence of Limestone shall cease. At the Effective Time:

(i) The Peoples Articles, as in effect immediately prior to the Effective Time, shall be the articles of incorporation of the Surviving Corporation until amended in accordance with the OGCL;

(ii) The Peoples Regulations, as in effect immediately prior to the Effective Time, shall be the regulations of the Surviving Corporation until amended in accordance with the OGCL; and

(iii) Subject to Section 6.25, each individual serving as a director of Peoples immediately prior to the Effective Time shall remain a director of the Surviving Corporation for the balance of the term for which such individual was elected and shall serve as such until his or her successor is duly elected and qualified in the manner provided for in the Peoples Articles and the Peoples Regulations or as otherwise provided by the OGCL or until his or her earlier death, resignation or removal in the manner provided in the Peoples Articles or the Peoples Regulations or as otherwise provided by the OGCL.

(iii) At and after the Effective Time, each share of Peoples Common Shares issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding and shall not be affected by the Parent Merger.

(b) *Option to Change Method of Merger.* Peoples may, at any time prior to the Effective Time, change the method of effecting the Parent Merger and/or the Subsidiary Bank Merger (including, without limitation, changing the provisions of this Article II), if and to the extent Peoples deems such change to be necessary, appropriate or desirable; provided, however, that no such change shall:

(i) Alter or change the amount or kind of consideration to which the holders of Limestone Common Stock are entitled in accordance with the terms and subject to the conditions of this Agreement;

(ii) Materially impede or delay consummation of the transactions contemplated by this Agreement; or

(iii) Cause the Parent Merger to fail to qualify as a “reorganization” under Code Section 368(a) of the Code.

Limestone, if requested by Peoples, shall enter into one or more amendments to this Agreement in order to effect any such change.

**2.02 *Effectiveness of Parent Merger.*** Subject to the satisfaction or waiver of the conditions set forth in Article VII of this Agreement, the Parent Merger shall become effective upon the later to occur of the following: (i) the filing of the certificate of merger with the OSS and the articles of merger with the KSS; or (ii) such later date and time as may be set forth in such certificate of merger and articles of merger with the approval of Peoples and Limestone. The Parent Merger shall have the effects prescribed in the OGCL and KBCA.

**2.03 *Effective Date and Effective Time.*** Subject to the satisfaction or waiver of the conditions set forth in Article VII of this Agreement, Peoples and Limestone shall cause the effective date of the Parent Merger (the “Effective Date”) to occur as soon as practicable after the last of the conditions set forth in Article VII shall have been satisfied or waived in accordance with the terms of this Agreement; provided, however, that the Effective Date shall not fall after the date specified in Section 8.01(c) without the unanimous consent of the parties or after the date or dates on which any Regulatory Authority approval or any extension thereof expires. The time on the Effective Date when the Parent Merger shall become effective is referred to herein as the “Effective Time”.

**2.04 *Closing.*** Subject to the terms and conditions of this Agreement, the closing of the Merger (the “Closing”) will occur by electronic exchange of documents at 10:00 am, Columbus, Ohio time, as soon as reasonably practicable, and in any event no later than thirty (30) days, after the satisfaction or waiver (subject to applicable law) of the latest to occur of the conditions set forth in Article VII hereof (other than those conditions that by their nature can be satisfied only at the Closing, but subject to the satisfaction or waiver of all conditions at the Closing), or on such other date as mutually agreed upon by Peoples and Limestone.

**2.05 *The Subsidiary Bank Merger.***

(a) Immediately following the Parent Merger, or at such later time as Peoples may determine, Limestone Bank will merge with and into Peoples Bank (the “Subsidiary Bank Merger”). Peoples Bank shall be the surviving entity in the Subsidiary Bank Merger and, following the Subsidiary Bank Merger, the separate corporate existence of Limestone Bank shall cease and Peoples Bank shall survive and continue to exist as an Ohio-chartered commercial bank. Promptly after the date of this Agreement, Peoples Bank and Limestone Bank shall enter into an agreement and plan of merger in substantially the form attached hereto as Exhibit B (the “Subsidiary Bank Merger Agreement”).

(b) Each of Peoples and Limestone shall approve the Subsidiary Bank Merger Agreement and the Subsidiary Bank Merger as the sole shareholders of each subsidiary bank,

respectively. Prior to the Effective Time, Limestone shall cause Limestone, and Peoples shall cause Peoples Bank, to execute such certificates or articles of merger and such other documents and certificates as are necessary to effectuate the Subsidiary Bank Merger (“Subsidiary Bank Merger Certificates”). The Parent Merger and the Subsidiary Bank Merger shall sometimes collectively be referred to herein as the “Merger.”

### ARTICLE III Merger Consideration

#### 3.01 *Conversion of Limestone Common Stock.*

At the Effective Time, by virtue of the Parent Merger and without any action on the part of Peoples, Limestone, or the holder of any of shares of Limestone Common Stock:

(a) Subject to Section 3.02 and except as otherwise provided by paragraph (b) of this Section 3.01, each share of Limestone Common Stock (other than Treasury Shares and Dissenting Shares) issued and outstanding immediately prior to the Effective Time shall be converted into the right to receive without interest a number of Peoples Common Shares equal to the Exchange Ratio (the “Merger Consideration”); and

(b) All of the shares of Limestone Common Stock converted into the right to receive the Merger Consideration shall no longer be outstanding and shall automatically be cancelled and shall cease to exist as of the Effective Time, and each certificate (each, an “Old Certificate,” it being understood that any reference herein to “Old Certificate” shall be deemed to include reference to the book-entry accounts relating to the ownership of uncertificated shares of Limestone Common Stock) previously representing any such shares of Limestone Common Stock shall thereafter represent only the right to receive (i) the Merger Consideration, (ii) cash in lieu of a fractional share which the shares of Limestone Common Stock represented by such Old Certificate have been converted into the right to receive pursuant to Section 3.01(a) and Sections 3.02(b)(v), and (iii) any dividends or distributions which the holder thereof has the right to receive pursuant to Section 3.02, in each case without any interest thereon. Old Certificates previously representing shares of Limestone Common Stock shall be exchanged for certificates or, at Peoples’ option, evidence of shares in book entry form representing whole shares of Peoples Common Shares as set forth in Section 3.01(a) (together with any dividends or distributions with respect thereto and cash in lieu of fractional shares issued in consideration therefor) upon the surrender of such Old Certificates in accordance with Section 3.02, without any interest thereon. If, between the date of this Agreement and the Effective Time, the outstanding shares of Peoples Common Shares or Limestone Common Stock shall have been increased, decreased, changed into or exchanged for a different number or kind of shares or securities, in any such case as a result of a reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split, or other similar change in capitalization, or there shall be any extraordinary dividend or extraordinary distribution, an appropriate and proportionate adjustment shall be made to the Exchange Ratio to give holders of Limestone Common Stock the same economic effect as contemplated by this Agreement prior to such event; provided, that nothing in this sentence shall be construed to permit Peoples or Limestone to take any action with respect to its securities that is prohibited by the terms of this Agreement.

(c) Notwithstanding anything in this Agreement to the contrary, at the Effective Time, all shares of Limestone Common Stock that are owned by Limestone (in each case other than shares (i) held in trust accounts, managed accounts, mutual funds or similar accounts, or otherwise held in a fiduciary or agency capacity that are beneficially owned by third parties, or (ii) held, directly or indirectly, as a result of debts previously contracted) shall be cancelled and cease to exist and no Merger Consideration shall be delivered or exchanged therefor.

(d) Notwithstanding anything in this Agreement to the contrary, shares of Limestone Common Stock which are issued and outstanding immediately prior to the Effective Time and which are held by Persons who have properly exercised, and not withdrawn or waived, appraisal rights with respect thereto (“Dissenting Shares”) in accordance with the KBCA will not be converted into the right to receive the Merger Consideration, but will be entitled in lieu thereof to receive payment of the fair value of their Dissenting Shares in accordance with the provisions of the KBCA unless and until the holders fail to perfect or effectively withdraw or lose their rights to appraisal and payment under the KBCA. If, after the Effective Time, any holder fails to perfect or effectively withdraws or loses their rights referred to in the preceding sentence, the applicable holder’s shares of Limestone Common Stock will thereupon be treated as if the shares had been converted at the Effective Time into the right to receive the Merger Consideration, without any interest thereon. Limestone will give Peoples prompt notice of any notices of intent to demand payment under the KBCA received by Limestone with respect to shares of Limestone Common Stock. Prior to the Effective Time, Limestone will not, except with the prior written consent of Limestone, make any payment with respect to, or settle or offer to settle, any demands referred to in this Section 3.01(d).

### 3.02 *Exchange and Payment Procedures.*

(a) Exchange Fund. At or prior to the Effective Time, Peoples shall deposit, or shall cause to be deposited, with Equiniti Trust Company (the “Exchange Agent”), for the benefit of the holders of Old Certificates for exchange in accordance with this Article III, (i) certificates or, at Peoples’ option, evidence in book-entry form, representing shares of Peoples Common Shares to be issued to holders of Limestone Common Stock (collectively, referred to herein as “New Certificates”), and (ii) cash in an amount sufficient to pay cash in lieu of any fractional shares (such New Certificates and cash described in the foregoing clauses (i) and (ii), together with any dividends or distributions with respect thereto payable in accordance with Section 3.02(b)(ii), being hereinafter referred to as the “Exchange Fund”).

#### (b) Exchange Procedures.

(i) As promptly as practicable after the Effective Time, but in no event later than five (5) business days thereafter, Peoples shall cause the Exchange Agent to mail to each holder of record of one or more Old Certificates representing shares of Limestone Common Stock immediately prior to the Effective Time that have been converted at the Effective Time into the right to receive the Merger Consideration, a letter of transmittal in customary form as reasonably agreed to prior to the Closing Date by the parties hereto (which shall specify that delivery shall be effected, and risk of loss and title to the Old Certificates shall pass, only upon proper delivery of the Old Certificates to the Exchange Agent) and instructions for use in effecting the surrender of the Old Certificates in



exchange for certificates representing the number of whole shares of Peoples Common Shares and any cash in lieu of fractional shares, as applicable, which the shares of Limestone Common Stock represented by such Old Certificate or Old Certificates shall have been converted into the right to receive pursuant to this Agreement as well as any dividends or distributions to be paid pursuant to Section 3.02(b)(ii). From and after the Effective Time, upon proper surrender of an Old Certificate or Old Certificates for exchange and cancellation to the Exchange Agent, together with such properly completed letter of transmittal, duly executed, the holder of such Old Certificate or Old Certificates shall be entitled to receive in exchange therefor, as applicable, (A)(1) a New Certificate representing that number of whole shares of Peoples Commons Shares to which such holder of Limestone Common Stock shall have become entitled pursuant to the provisions of Section 3.01 and (2) a check representing the amount of (x) any cash in lieu of a fractional share which such holder has the right to receive in respect of the Old Certificate or Old Certificates surrendered pursuant to the provisions of this Article III and (y) any dividends or distributions which the holder thereof has the right to receive pursuant to this Section 3.02(b), and the Old Certificate or Old Certificates so surrendered shall forthwith be cancelled. No interest will be paid or accrued on the Peoples Common Shares or any cash in lieu of fractional shares or dividends or distributions payable to holders of Old Certificates. Until surrendered as contemplated by this Section 3.02(b), each Old Certificate shall be deemed at any time after the Effective Time to represent only the right to receive, upon surrender, the number of whole shares of Peoples Common Shares which the shares of Limestone Common Stock represented by such Old Certificate have been converted into the right to receive and any cash in lieu of fractional shares or in respect of dividends or distributions as contemplated by this Section 3.02(b).

(ii) No dividends or other distributions declared with respect to Peoples Common Shares shall be paid to the holder of any unsurrendered Old Certificate until the holder thereof shall surrender such Old Certificate in accordance with Section 3.02(b). After the surrender of an Old Certificate in accordance with Section 3.02(b), the record holder thereof shall be entitled to receive any such dividends or other distributions, without any interest thereon, which theretofore had become payable with respect to the whole shares of Peoples Common Shares which the shares of Limestone Common Stock represented by such Old Certificate have been converted into the right to receive (after giving effect to Section 6.15).

(iii) In the event that any New Certificate representing shares of Peoples Common Shares is to be issued in a name other than that in which the Old Certificate or Old Certificates surrendered in exchange therefor is or are registered, it shall be a condition of the issuance thereof that the Old Certificate or Old Certificates so surrendered shall be properly endorsed (or accompanied by an appropriate instrument of transfer) and otherwise in proper form for transfer, and that the Person requesting such exchange shall pay to the Exchange Agent in advance any transfer or other similar Taxes required by reason of the issuance of a New Certificate representing shares of Peoples Common Shares in any name other than that of the registered holder of the Old Certificate or Old Certificates surrendered, or required for any other reason, or shall establish to the satisfaction of the Exchange Agent that such Tax has been paid or is not payable.

(iv) After the Effective Time, there shall be no transfers on the stock transfer books of Limestone of the shares of Limestone Common Stock that were issued and outstanding immediately prior to the Effective Time. If, after the Effective Time, Old Certificates representing such shares are presented for transfer to the Exchange Agent, they shall be cancelled and exchanged for New Certificates representing shares of Peoples Common Shares, cash in lieu of fractional shares and dividends or distributions that the holder presenting such Old Certificates is entitled to, as provided in Article III.

(v) Notwithstanding anything to the contrary contained herein, no New Certificates or scrip representing fractional shares of Peoples Common Shares shall be issued upon the surrender for exchange of Old Certificates or otherwise pursuant to this Agreement, no dividend or distribution with respect Peoples Common Shares shall be payable on or with respect to any fractional share, and fractional share interests shall not entitle the owner thereof to vote or to any other rights of a shareholder of Peoples. In lieu of the issuance of any fractional share, Peoples shall pay to each former shareholder of Limestone who otherwise would be entitled to receive such fractional share an amount in cash (rounded to the nearest cent) determined by multiplying (i) the average of the closing-sale prices of Peoples Common Shares on the NASDAQ Stock Market (the “NASDAQ”) as reported by *The Wall Street Journal* for the five (5) consecutive full trading days ending on the trading day preceding the Closing Date (the “Peoples Common Share Closing Price”) by (ii) the fraction of a share (rounded to the nearest one-thousandth when expressed in decimal form) of Peoples Common Shares which such holder would otherwise be entitled to receive pursuant to Section 3.01(a). The parties acknowledge that payment of the cash consideration in lieu of issuing fractional shares is not separately bargained-for-consideration, but merely represents a mechanical rounding off for the purposes of avoiding the expense and inconvenience that would otherwise be caused by the issuance of fractional shares.

(vi) Any portion of the Exchange Fund that remains unclaimed by the shareholders of Limestone for six months after the Effective Time shall be paid to the Surviving Corporation. Any former holders of Limestone Common who have not theretofore exchanged their Old Certificates pursuant to Section 3.02 shall thereafter look only to the Surviving Corporation for delivery of the New Certificates and payment cash in lieu of any fractional shares and any unpaid dividends and distributions on the Peoples Common Stock deliverable in respect of each former share of Limestone Common Stock that such holder holds as determined pursuant to this Agreement, in each case, without any interest thereon. Notwithstanding the foregoing, none of Peoples, Limestone, the Surviving Corporation, the Exchange Agent or any other Person shall be liable to any former holder of shares of Limestone Common Stock for any amount delivered in good faith to a public official pursuant to applicable abandoned property, escheat or similar laws.

(vii) Each of Peoples and the Exchange Agent shall be entitled to deduct and withhold from any consideration otherwise payable pursuant to this Agreement all amounts required to be deducted and withheld with respect to the making of the consideration payment under the Code or any provision of state, local or foreign Tax law. To the extent that amounts are so withheld by Peoples or the Exchange Agent, as the

case may be, the withheld amounts (i) will be paid over by Peoples or the Exchange Agent to the appropriate governmental authority and (ii) will be treated for all purposes of this Agreement as having been paid to the Person in respect of which the deduction and withholding was made.

(viii) In the event any Old Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Old Certificate to be lost, stolen or destroyed and, if required by Peoples, the posting by such Person of a bond in such amount as Peoples or the Exchange Agent may determine is reasonably necessary as indemnity against any claim that may be made against it with respect to such Old Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Old Certificate the shares of Peoples Common Shares, and any cash in lieu of fractional shares and dividends or distributions deliverable in respect thereof pursuant to this Agreement.

#### **ARTICLE IV**

##### **Actions Pending Consummation of Merger**

4.01 ***Forbearances of Limestone.*** From the date hereof until the Effective Time, except as expressly contemplated or permitted by this Agreement or as disclosed in the Limestone Disclosure Schedule (as hereafter defined), as required by law (including Pandemic Measures) or required by an applicable Regulatory Order, without the prior written consent of Peoples, Limestone shall not, and shall cause its Subsidiaries not to:

(a) ***Ordinary Course.*** Conduct the business of Limestone and its Subsidiaries other than in the ordinary and usual course or fail to use reasonable efforts to preserve intact their respective business organizations and assets and maintain their respective rights, franchises and existing relations with customers, suppliers, vendors, employees and business associates, or voluntarily take any action which, at the time taken, is reasonably likely to have an adverse effect upon Limestone's ability to perform any of its obligations under this Agreement or prevent or materially delay the consummation of the transactions contemplated by this Agreement, or enter into any new line of business or materially change its lending, investment, underwriting, risk, asset liability management or other banking and operating policies, except as required by applicable law or policies imposed by any Governmental Authority or by any applicable Regulatory Order.

(b) ***Capital Stock.*** (i) Issue, sell or otherwise permit to become outstanding, or authorize the creation of, any additional Limestone Common Stock or other capital stock of Limestone except upon the fulfillment of restricted stock awards granted as of the date of this Agreement in accordance with their present terms or upon conversion of Non-Voting Common Shares of Limestone Common Stock outstanding on the date of this Agreement into Common Shares of Limestone Common Stock in accordance with their present terms, (ii) enter into any agreement, or amend or modify the Limestone Omnibus Equity Compensation Plan except as otherwise set forth in this Agreement, with respect to the foregoing, (iii) permit any additional new grants of any restricted stock, options, other Rights or similar stock-based employee rights under Limestone Omnibus Equity Compensation Plan or any other plan or program, or (iv) effect any recapitalization, reclassification, stock split, or similar change in capitalization.

(c) Dividends; distributions; adjustments. (i) Make, declare, pay or set aside for payment any dividend or distribution on any shares of Limestone Common Stock, except for its normal and customary quarterly cash dividend in the amount of \$0.05 per share for each full calendar quarter preceding the Effective Date subject to Section 6.15, or (ii) directly or indirectly adjust, split, combine, redeem, reclassify, purchase or otherwise acquire, any shares of capital stock of Limestone except upon conversion of Non-Voting Common Shares of Limestone Common Stock outstanding on the date of this Agreement into Common Shares of Limestone Common Stock in accordance with their present terms.

(d) Compensation; Employment Agreements. Enter into, modify, amend, renew or terminate any employment, consulting, severance, retention, change in control, or similar agreements or arrangements with any director, consultant, officer or employee of Limestone or any of its Subsidiaries, hire or engage any full-time employee or consultant, other than as replacements for positions existing on the date hereof, or grant any salary or wage increase or bonus or increase any employee benefit (including incentive or bonus payments), except for changes that are required by applicable law or as otherwise permitted under Section 6.10(e), and except for annual merit increases in the salaries and wages of employees of Limestone Bank not to exceed an aggregate average increase of more than 4.5% of current salaries across the total employee base.

(e) Benefit Plans. Enter into, establish, adopt, amend, modify, make any contributions to or terminate (except (i) as may be required by applicable law, (ii) as contemplated by this Agreement, or (iii) pursuant to the regular annual renewal of insurance contracts) the Limestone Omnibus Equity Compensation Plan or any pension, retirement, phantom stock, stock purchase, savings, profit sharing, deferred compensation, change in control, salary continuation, consulting, bonus, group insurance or other employee benefit, incentive or welfare contract (including related administrative services contracts), plan or arrangement, or any trust agreement (or similar arrangement) related thereto, in respect of any director, consultant, officer or employee of Limestone or any of its Subsidiaries, or take any action to accelerate the payment of benefits or the vesting or exercisability of options, restricted stock, phantom stock or other compensation or benefits payable thereunder.

(f) Dispositions. Sell, transfer, mortgage, encumber or otherwise dispose of any of its material properties or assets or any business to any Person other than a wholly owned Subsidiary, or cancel, release or assign any indebtedness of any Person other than a wholly owned Subsidiary or any claims against any Person other than a wholly owned Subsidiary, in each case other than in the ordinary course, consistent with past practices, including any debt collection or foreclosure transactions.

(g) Acquisitions. Acquire (other than by way of foreclosures or acquisitions of control in a bona fide fiduciary capacity or in satisfaction of debts previously contracted in good faith, in each case in the ordinary and usual course of business consistent with past practice) all or any portion of the assets, business, deposits or properties of any other Person.

(h) Governing Documents. Amend the Limestone Articles, the Limestone Bylaws or the organizational and governing documents of its Subsidiaries.



(i) Accounting Methods. Implement or adopt any change in its accounting principles, practices or methods, other than as may be required by generally accepted accounting principles.

(j) Material Contracts. (i) Terminate, amend, or waive any provision of, any Material Contract; (ii) make any change in any instrument or agreement governing the terms of any of its securities, or material lease or any other Material Contract, other than normal renewals of leases and other Material Contracts without material adverse changes of terms with respect to Limestone; (iii) enter into any Material Contract that (A) would constitute a Material Contract if it were in effect on the date of this Agreement or (B) that has a term of one year or longer and that requires payments or other obligations by Limestone or any Limestone Subsidiary of \$100,000 or more under the Material Contract; or (iv) enter into any Material Contract if the Material Contract, in the aggregate with all Material Contracts entered into by Limestone or any Limestone Subsidiary from and after the date of this Agreement, would result in aggregate required payments by Limestone or any Limestone Subsidiary in excess of \$500,000.

(k) Claims. Settle any claim, suit, action or proceeding brought against Limestone, except for any claim, action or proceeding which does not involve precedent for other material claims, suits, actions or proceedings and which involves solely money damages in an amount, individually not to exceed \$100,000 or, in the aggregate, not to exceed \$500,000, for all such claims, actions or proceedings.

(l) Adverse Actions. Take any action that is intended or is reasonably likely to result in (i) any of its representations and warranties set forth in this Agreement being or becoming untrue at any time at or prior to the Effective Time, (ii) any of the conditions to the Merger set forth in Article VII not being satisfied, or (iii) a violation of any provision of this Agreement except, in each case, as may be required by applicable law or by any Governmental Authority.

(m) Risk Management. Except pursuant to applicable law or as required by any Governmental Authority, (i) implement or adopt any material change in its interest rate or other risk management policies, procedures or practices, (ii) fail to follow its existing policies or practices with respect to managing its exposure to interest rate and other risk, (iii) fail to use commercially reasonable means to address any material increase in its aggregate exposure to interest rate risk, or (iv) fail to follow its existing policies or practices with respect to managing its fiduciary risks.

(n) Borrowings. Other than in the ordinary course, consistent with past practice, assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other individual, corporation or other entity (it being understood and agreed that incurrence of indebtedness in the ordinary course, consistent with past practices shall include the creation of deposit liabilities, issuance of letters of credit, purchases of federal funds, borrowings from any of the Federal Home Loan Banks, sales of certificates of deposits, and entry into repurchase agreements).

(o) Indirect Loans; Participations. (i) Make or purchase any indirect or brokered Loans, or (ii) purchase from or sell to any financial institution or other non-depository lender an interest in a Loan, except for such credit facilities made to borrowers in Limestone's

Territory which are secured by collateral located in Limestone's Territory in the ordinary course and consistent with past practices.

(p) Capital Expenditures. Make, or commit to make, any capital expenditures that exceed by more than five percent (5%) Limestone's capital expenditure budget set forth in Section 4.01(p) of the Limestone Disclosure Schedule.

(q) Lending. (i) Enter into any new line of business, change in any material respect its lending, investment, underwriting, risk and asset liability management and other banking and operating, securitization and servicing policies (including any change in the maximum ratio or similar limits as a percentage of its capital applicable with respect to its loan portfolio or any segment thereof); (ii) make or acquire, or modify, renew or extend any Loan except for Loans made acquired, renewed or extended in the ordinary course, consistent with past practices and in compliance with its Subsidiaries' loan policies and underwriting guidelines and standards as in effect as of the date of this Agreement; (iii) make or acquire, or modify, renew or extend any Loan (A) in the case of new Loans (other than unsecured Loans), if immediately after making the Loan the Person obtaining the Loan and the Person's Affiliates would have debt owed to Limestone Bank that is, in the aggregate, in excess of \$4,000,000 or any new Loan that causes the aggregate credit exposure to exceed \$4,000,000, (B) in the case of the modification, renewal, or extension of any Loan (other than unsecured Loans) outstanding as of the date of this Agreement, if immediately after the modification, renewal, or extension of the Loan the Person obtaining the modification, renewal, or extension of the Loan and the Person's Affiliates would have an aggregate credit exposure to Limestone or any of its Subsidiaries that is, in excess of \$4,000,000, (C) in the case of new unsecured Loans, or the modification, renewal, or extension of any unsecured Loan outstanding as of the date of this Agreement, if immediately after making the new unsecured Loan or immediately after the modification, renewal or extension of the unsecured Loan the Person obtaining the new unsecured Loan or the modification, renewal or extension of the unsecured Loan and the Person's Affiliates would have unsecured debt owed to Limestone or any of its Subsidiaries that is, in the aggregate, in excess of \$500,000, or (D) that is in excess of \$500,000 and that is classified by Limestone Bank as "Special Mention," "Substandard," "Doubtful," "Loss," "Classified," "Watch List" or words of similar import, in each case, except pursuant to existing commitments entered into prior to the date hereof; (iv) grant, or renew the prior grant of, the deferral of any payments under any Loan or make or agree to make any other modification that would result in the Loan being, or continue the status of the Loan as, a CARES Act Modified Loan, in each case with respect to any Loan that is in an amount in excess of \$500,000; provided that in the case of each of items (i) – (iv) above Peoples shall be required to respond (and will deemed to consent if it fails to respond) to any request for a consent to make such Loan or extension of credit in writing within five (5) business days after the loan package is delivered to Peoples.

(r) Investment Securities Portfolio. Restructure or materially change its investment securities portfolio or its portfolio duration, through purchases, sales or otherwise, or the manner in which the portfolio is classified or reported, or invest in any mortgage-backed or mortgage-related securities which would be considered "high risk" securities under applicable regulatory pronouncements, or, except as reasonably deemed necessary under the asset liability management policies of Limestone Bank consistent with its safe and sound practices, otherwise

purchase or sell securities in the portfolio individually in that exceed \$5,000,000 or in the aggregate that would exceed \$75,000,000.

(s) **Taxes.** (i) Fail to prepare or file or cause to be prepared or filed in a timely manner consistent with past practice all Tax Returns that are required to be filed (with extensions) at or before the Effective Time, (ii) fail to timely pay any Tax due (whether or not required to be shown on any such Tax Returns), or (iii) make, change or revoke any Tax election or Tax accounting method, file any amended Tax Return, settle any Tax claim or assessment or consent to the extension or waiver of any statute of limitations with respect to Taxes (or offer or agree to do any of the foregoing or surrender its rights to do any of the foregoing or to claim any refund of Taxes or file any amended Tax Return).

(t) **Offices and Facilities.** (i) Open, close or relocate any branch office, ATMS, loan production office or other significant office or operations facility of Limestone or its Subsidiaries at which business is conducted, or (ii) fail to use commercially reasonable efforts to maintain and keep their respective properties and facilities in their present condition and working order, ordinary wear and tear excepted.

(u) **Interest Rates.** Increase or decrease the rate of interest paid on time deposits or certificates of deposit, except in a manner consistent with past practices in relation to rates prevailing in the relevant market.

(v) **Foreclosures.** Foreclose upon or otherwise cause Limestone or any of its Subsidiaries to take title to or possession or control of any real property or entity thereon without first obtaining a Phase I thereon which indicates that the property is free of Hazardous Material; provided, however, that no such report shall be required to be obtained with respect to single-family residential real property of one acre or less to be foreclosed upon unless Limestone has reason to believe that such real property may contain any such Hazardous Material.

(w) **Deposit Liabilities.** Cause or permit any material change to the general composition of Limestone Bank's deposit products.

(x) **Reorganization 368(a).** Not take, or fail to take, any action that would reasonably be expected to prevent or impede the Parent Merger from qualifying as a "reorganization" within the meaning of Section 368(a) of the Code.

(y) **Commitments.** Agree or commit to do any of the foregoing.

4.02 ***Forbearances of Peoples.*** From the date hereof until the Effective Time, except as expressly contemplated or permitted by this Agreement, as required by law (including Pandemic Measures) or required by an applicable Regulatory Order, without the prior written consent of Limestone, Peoples shall not, and shall cause its Subsidiaries not to:

(a) **Capital Stock.** Effect any recapitalization, reclassification, stock split, or similar change in capitalization or declare any extraordinary dividend or extraordinary distribution with respect to Peoples Common Shares.

(b) Governing Documents. Amend the Peoples Articles or the Peoples Regulations in a manner that would adversely affect the holders of New Certificates, or adversely affect the holders of New Certificates relative to other holders of Peoples Common Shares.

(c) Adverse Actions. Take any action that is intended or is reasonably likely to result in (i) any of its representations and warranties set forth in this Agreement being or becoming materially inaccurate at any time at or prior to the Effective Time, (ii) any of the conditions to the Merger set forth in Article VII not being satisfied, (iii) a violation of any provision of this Agreement except, in each case, as may be required by applicable law or by any Governmental Authority, or (iv) a delay in the consummation of the transactions contemplated by this Agreement.

(d) Reorganization 368(a). Not take, or fail to take, any action that would reasonably be expected to prevent or impede the Parent Merger from qualifying as a “reorganization” within the meaning of Section 368(a) of the Code.

(e) Commitments. Agree or commit to do any of the foregoing.

## ARTICLE V Representations and Warranties

5.01 Representations and Warranties of Limestone. Except as disclosed in the disclosure schedule delivered by Limestone to Peoples concurrently herewith (as the same may be supplemented and amended as permitted by Section 6.11) (the “Limestone Disclosure Schedule”); provided that (i) the mere inclusion of an item in the Limestone Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission by Limestone that such item represents a material exception or fact, event or circumstance or that such item is reasonably likely to result in a Material Adverse Effect and (ii) any disclosures made with respect to a section of Article V shall be deemed to qualify any other section of Article V specifically referenced or cross-referenced, Limestone hereby represents and warrants to Peoples as follows:

(a) Organization, Standing and Authority.

(i) Limestone is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and is a bank holding company duly registered with the FRB under the BHCA. Limestone has the corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted in all material respects. Limestone is duly qualified to do business and is in good standing in any foreign jurisdictions where its ownership or leasing of property or assets or the conduct of its business requires it to be so qualified. Section 5.01(a)(i) of the Limestone Disclosure Schedule sets forth the foreign jurisdictions in which Limestone conducts business.

(ii) Except, in the case of clauses (B) and (C) only, as would not reasonably be likely to have, individually or in the aggregate, a Material Adverse Effect on Limestone, each Subsidiary of Limestone (A) is duly organized and validly existing under the laws of its jurisdiction of organization, (B) is duly licensed or qualified to do



business and, where such concept is recognized under applicable law, in good standing in all jurisdictions (whether federal, state, local or foreign) where its ownership, leasing or operation of property or the conduct of its business requires it to be so licensed or qualified or in good standing and (C) has all requisite corporate power and authority to own, lease or operate its properties and assets and to carry on its business as now conducted. There are no restrictions on the ability of any Subsidiary of Limestone to pay dividends or distributions, except, in the case of a Subsidiary that is an insured depository institution, for restrictions on dividends or distributions generally applicable to all such regulated entities. The deposit accounts of Limestone Bank are insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by law, all premiums and assessments required to be paid in connection therewith have been paid when due, and no proceedings for the termination of such insurance are pending or, to the Knowledge of Limestone, threatened. Section 5.01(a)(ii) of the Limestone Disclosure Schedule sets forth a true and complete list of all Subsidiaries of Limestone as of the date hereof.

(b) Capital Structure of Limestone.

(i) As of September 30, 2022, the authorized capital stock of Limestone consists of (A) 39,000,000 Limestone Common Stock, comprised of (1) 28,000,000 Common Shares, of which 6,639,033 shares are currently issued and outstanding and (2) 10,000,000 Non-Voting Common Shares, of which 1,000,000 shares are currently issued and outstanding, and (B) 1,000,000 shares of Preferred Shares, with no par value, of which no shares are issued and outstanding (“Limestone Preferred Shares”). The Limestone Common Stock and Limestone Preferred Shares are collectively referred to herein as “Limestone Shares.” As of September 30, 2022, there are: (A) no Treasury Shares held by Limestone or otherwise owned by Limestone or its Subsidiaries; and (B) 135,200 restricted Common Shares of Limestone Common Stock outstanding and 122,203 Common Shares of Limestone Common Stock reserved for award and issuance pursuant to the Limestone Omnibus Equity Compensation Plan. No shares of Limestone Preferred Shares are issued and outstanding or reserved for issuance. All of the issued and outstanding Limestone Shares have been duly authorized and validly issued and are fully paid, nonassessable and free of preemptive rights, with no personal liability attaching to the ownership thereof. Except for the restricted stock, plans and other obligations set forth in this paragraph (i) or as otherwise set forth on Section 5.01(b) of the Limestone Disclosure Schedule, Limestone does not have, and is not bound by, any outstanding or issued Rights with respect to any Limestone Shares.

(ii) There are no outstanding options or warrants under the Limestone Omnibus Equity Compensation Plan. The restricted stock awards issued pursuant to the Limestone Omnibus Equity Compensation Plan have been granted in compliance in all material respects with the terms of the applicable restricted stock award agreement, the Limestone Omnibus Equity Compensation Plan and all applicable laws. With respect to each restricted stock award outstanding as of the date hereof, the name of each recipient, the date of each restricted stock award granted, the number of shares subject to each such restricted stock award and the market value at the time of granting of the restricted stock award are set forth in Section 5.01(b) of the Limestone Disclosure Schedule.

(iii) Except for the Debentures and Subordinated Capital Notes, neither Limestone nor any of its Subsidiaries have any authorized, issued, or outstanding bonds, debentures, notes or other indebtedness for which the holders thereof have the right to vote on any matters on which the shareholders have the right to vote. Except as set forth in Section 5.01(b) of the Limestone Disclosure Schedule, there are no registration rights, and there is no voting trust, proxy, rights agreement, “poison pill” anti-takeover plan or other agreement or understanding to which Limestone is a party or by which it is bound with respect to any equity security of any class of Limestone or with respect to any equity security, partnership interest or similar ownership interest of any class of any of its Subsidiaries.

(c) Authority; No Violation.

(i) Limestone has full corporate power and authority to execute and deliver this Agreement and, subject to the shareholder and other actions described below, to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the Parent Merger and the Subsidiary Bank Merger have been duly and validly approved by the Board of Directors of Limestone. The Board of Directors of Limestone has determined, subject to Section 6.06 of this Agreement, that the Parent Merger, on the terms and conditions set forth in this Agreement, is in the best interests of Limestone and its shareholders and has directed that this Agreement and the transactions contemplated hereby be submitted to Limestone’s shareholders for approval (with the Limestone Board of Directors’ recommendation in favor of approval) at a meeting of the shareholders, and has adopted a resolution to the foregoing effect. Except for the approval of this Agreement by the affirmative vote of the holders of a majority of the outstanding shares of each class of Limestone Common Stock (the “Requisite Limestone Vote”), and the adoption and approval of the Subsidiary Bank Merger Agreements by Limestone as sole shareholder of Limestone Bank, no other corporate proceedings on the part of Limestone are necessary to approve this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Limestone and (assuming due authorization, execution and delivery by Peoples) constitutes a valid and binding obligation of Limestone, enforceable against Limestone in accordance with its terms (except in all cases as enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the rights of creditors generally and the availability of equitable remedies).

(ii) Neither the execution and delivery of this Agreement by Limestone nor the consummation by Limestone of the transactions contemplated hereby, including the Parent Merger and the Subsidiary Bank Merger, nor compliance by Limestone with any of the terms or provisions hereof, will (A) violate any provision of the Limestone Articles or Limestone Bylaws or (B) assuming that the consents and approvals referred to in Section 5.01(d) are duly obtained, (1) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Limestone or any Limestone Subsidiaries or any of their respective properties or assets or (2) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate

the performance required by, or payments, rebates, or reimbursements required under, or result in the creation of any Lien upon any of the respective properties or assets of Limestone or any Limestone Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Limestone or any Limestone Subsidiary is a party, or by which they or any of their respective properties or assets may be bound, except (in the case of clause (2) above) for such violations, conflicts, breaches or defaults which would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Limestone.

(d) Consents and Regulatory Approvals.

(i) No consents or approvals of, or filings or registrations with, any Governmental Authority or with any third party are required to be made or obtained by Limestone or any of its Subsidiaries in connection with the execution, delivery or performance by Limestone of this Agreement or the consummation of the transactions contemplated hereby, including the Merger, except for (A) the filings of applications, waivers or notices, as applicable, with Regulatory Authorities to approve the transactions contemplated by the Agreement, (B) the filing with the SEC and declaration of effectiveness of a registration statement on Form S-4 (the “Registration Statement”) under the Securities Act including the joint proxy statement/prospectus (the “Joint Proxy Statement/Prospectus”) relating to the meetings, including any adjournments or postponements thereof, of Limestone shareholders and Peoples shareholders to be held in connection with this Agreement and the Merger (the “Limestone Meeting” and the “Peoples Meeting,” as the case may be), (C) Requisite Limestone Vote and Requisite Peoples Vote, (D) the filing of the certificate of merger with the OSS pursuant to the OGCL and articles of merger with the KSS pursuant to the KBCA, and filing the Subsidiary Bank Merger Certificates, and (E) the receipt of the approvals set forth in Section 7.01(b).

(ii) As of the date hereof, Limestone is not aware of any reason why the approvals set forth in Section 7.01(b) will not be received without the imposition of a condition, restriction or requirement of the type described in Section 7.01(b).

(iii) As of the date hereof, there is no dispute or other proceeding pending between Limestone or Limestone Bank or any of their Subsidiaries and any community groups relating to Limestone or Limestone Bank, and, to the Limestone’s Knowledge, no such dispute or other proceeding as been threatened, in each case, that could reasonably be expected to materially delay the receipt of, or impair the ability to obtain, any regulatory approval required to be obtained by Peoples to consummate the transactions contemplated by this Agreement.

(e) SEC Reports.

(i) Limestone has timely filed all reports, registration statements, proxy statements and other materials, together with any amendments required to be made with respect thereto, that it was required to file with the SEC, and all such reports, registration statements, proxy statements, other materials and amendments have complied in all

material respects with all legal requirements relating thereto, and has paid all fees and assessments due and payable in connection therewith.

(ii) An accurate and complete copy of each final registration statement, prospectus, report, schedule and definitive proxy statement filed with or furnished to the SEC by Limestone pursuant to the Securities Act or the Exchange Act prior to the date of this Agreement (the “Limestone’s SEC Reports”) is publicly available. No such Limestone’s SEC Report, at the time filed, furnished or communicated (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), and considering all amendments to any of Limestone’s SEC Report filed prior to the date hereof, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) shall be deemed to modify information as of an earlier date. As of their respective dates, all Limestone’s SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto. No executive officer of Limestone has failed in any respect to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”). As of the date hereof, there are no outstanding comments from or unresolved issues raised by the SEC with respect to any of Limestone’s SEC Reports.

(f) Financial Statements; Material Adverse Effect; Internal Controls.

(i) The financial statements of Limestone and its Subsidiaries included (or incorporated by reference) in Limestone’s SEC filings (including the related notes, where applicable) (A) have been prepared from, and are in accordance with, the books and records of Limestone and its Subsidiaries, (B) fairly present in all material respects the consolidated results of operations, cash flows, changes in shareholders’ equity and consolidated financial position of Limestone and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject in the case of unaudited statements to recurring year-end audit adjustments normal in nature and amount), (C) complied as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, and (D) have been prepared in accordance with GAAP, consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. As of the date hereof, the books and records of Limestone and its Subsidiaries have been maintained in all material respects in accordance with generally accepted accounting principles and any other applicable legal and accounting requirements and reflect only actual transactions. As of the date hereof, Crowe LLP has not resigned (or informed Limestone that it intends to resign) or been dismissed as independent public accountants of Limestone as a result of or in connection with any disagreements with Limestone on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure.

(ii) Neither Limestone nor any of its Subsidiaries has incurred any liability or obligation of any nature whatsoever, except for (A) those liabilities that are



reflected or reserved against on the consolidated balance sheet of Limestone included in its Annual Report on Form 10-K for fiscal year ended December 31, 2021 (including any notes thereto), (B) liabilities incurred in the ordinary course of business consistent in nature and amount with past practice since December 31, 2021 or (C) in connection with this Agreement and the transactions contemplated hereby.

(iii) Since December 31, 2021, (A) Limestone and its Subsidiaries have conducted their respective businesses in the ordinary and usual course consistent with past practice, and (B) no event has occurred or circumstance arisen that, individually or taken together with all other facts, circumstances and events is reasonably likely to have a Material Adverse Effect on Limestone.

(iv) Limestone and each of its Subsidiaries maintains a system of “disclosure controls and procedures” (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) reasonably designed and maintained to ensure that all information (both financial and non-financial) required to be disclosed by Limestone in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to Limestone’s management as appropriate to allow timely decisions regarding required disclosure and to make the certifications of the Chief Executive Officer and Chief Financial Officer of Limestone required under the Exchange Act with respect to such reports. Limestone has disclosed, based on its most recent evaluation prior to the date of this Agreement, to Limestone’s outside auditors and the audit committee of the Limestone Board (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that would be reasonably likely to adversely affect Limestone’s ability to accurately record, process, summarize and report financial information, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Limestone’s internal controls over financial reporting. Since December 31, 2021, neither Limestone, its Subsidiaries nor any director, officer, employee, auditor, accountant or representative of Limestone or its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Limestone or its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that Limestone or its Subsidiaries has engaged in questionable accounting or auditing practices.

(g) Litigation. Except as set forth in Section 5.01(g) of Limestone Disclosure Schedule, there is no suit, action, investigation, claim, proceeding or review pending, or to Limestone’s Knowledge, threatened against or affecting it or any of its Subsidiaries or any of the current or, to the Knowledge of Limestone, former directors or executive officers of it or any of its Subsidiaries in their capacities as such (and it is not aware of any basis for any such suit, action, investigation, claim, proceeding or review) (i) that involves a Governmental Authority, or (ii) that, individually or in the aggregate, is (A) material to it and its Subsidiaries, taken as a whole, or is reasonably likely to result in a material restriction on its or any of its Subsidiaries’ businesses or, after the Effective Time, the business of Peoples or any of its Affiliates, or (B) reasonably likely

to materially prevent or delay it from performing its obligations under, or consummating the transactions contemplated by, this Agreement. There is no injunction, order, award, judgment, settlement, decree or regulatory restriction imposed upon or entered into by Limestone, any of its Subsidiaries or the assets of it or any of its Subsidiaries (or that, upon consummation of the Merger, would apply to Peoples or any of its Affiliates) that is or could reasonably be expected to have a Material Adverse Effect on Limestone.

(h) Regulatory Matters.

(i) Except as set forth in Section 5.01(h) of Limestone Disclosure Schedule, neither Limestone nor any of its Subsidiaries nor any of their respective properties is a party to or is subject to any order, decree, formal or informal agreement, memorandum of understanding or similar arrangement with, or a commitment letter, board resolution or similar submission to, or extraordinary supervisory letter (any of the foregoing, a “Regulatory Order”) from any federal or state governmental agency or authority charged with the supervision or regulation of financial institutions (or their holding companies) or issuers of securities or engaged in the insurance of deposits (including, without limitation, the FDIC, the FRB, the KDFI and the ODFI) or the supervision or regulation of it or any of its Subsidiaries (collectively, the “Regulatory Authorities”).

(ii) Neither Limestone nor any of its Subsidiaries has been advised by any Regulatory Authority that such Regulatory Authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, formal or informal agreement, memorandum of understanding, commitment letter, board resolution, supervisory letter or similar submission.

(i) Compliance with Laws. Limestone, and each of the Limestone Subsidiaries, hold, and have held at least for the last three (3) years, all licenses, franchises, permits and authorizations necessary for the lawful conduct of their respective businesses and ownership of their respective properties, rights and assets under and pursuant to each (and have paid all fees and assessments due and payable in connection therewith), except where neither the cost of failure to hold nor the cost of obtaining and holding the applicable license, franchise, permit or authorization (nor the failure to pay any fees or assessments) would, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Limestone, and, to the knowledge of Limestone, no suspension or cancellation of any such necessary license, franchise, permit or authorization is threatened. Except as set forth on Section 5.01(i) of the Limestone Disclosure Schedule, Limestone and each of its Subsidiaries have complied in all material respects with and are not in material default or violation under any applicable law, statute, order, rule, regulation, policy and/or guideline of any Governmental Authority relating to Limestone or any of the Limestone Subsidiaries, including without limitation all laws related to data protection or privacy, the USA PATRIOT Act, the Bank Secrecy Act, the Equal Credit Opportunity Act and Regulation B, the Fair Housing Act, the Community Reinvestment Act, the Fair Credit Reporting Act, the Truth in Lending Act and Regulation Z, the Home Mortgage Disclosure Act, the Fair Debt Collection Practices Act, the Electronic Fund Transfer Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, any regulations promulgated by

the Consumer Financial Protection Bureau, the Interagency Policy Statement on Retail Sales of Nondeposit Investment Products, the SAFE Mortgage Licensing Act of 2008, the Real Estate Settlement Procedures Act and Regulation X, and any other law relating to bank secrecy, discriminatory lending, financing or leasing practices, money laundering prevention, Sections 23A and 23B of the Federal Reserve Act, the Sarbanes-Oxley Act, and all agency requirements relating to the origination, sale and servicing of mortgage and consumer Loans.

(j) Material Contracts; Defaults.

(i) Except as set forth in the Limestone Disclosure Schedule listed under Section 5.01(j)(i), neither Limestone nor any of its Subsidiaries is a party to or is bound by any contract or agreement (whether written or verbal) of the following types as of the date of this Agreement, and no such contract or agreement is presently being negotiated or discussed:

(A) any contract involving commitments to others to make capital expenditures or purchases or sales of capital assets in excess of \$50,000 in any one case or \$250,000 in the aggregate in any period of 12 consecutive months;

(B) any contract relating to any direct or indirect indebtedness of Limestone or any of its Subsidiaries for borrowed money (including loan agreements, lease purchase arrangements, guarantees, agreements to purchase goods or services or to supply funds or other undertakings relating to the extension of credit to Limestone and its Subsidiaries but excluding any contract relating to indebtedness of Limestone Bank with respect to deposit liabilities, letters of credit, repurchase agreements, purchases of federal funds or other borrowings or commitments entered into by Limestone Bank in the ordinary course of its banking business, consistent with past practice), or any conditional sales contracts, equipment lease agreements and other security arrangements with respect to personal property with an obligation in excess of \$50,000 in any one case or \$250,000 in the aggregate in any period of 12 consecutive months;

(C) any employment, severance, consulting or management services contract or any confidentiality or nondisclosure contract with any director, officer, employee or consultant of Limestone or any of its Subsidiaries;

(D) any contract containing covenants limiting the freedom of Limestone or any of its Subsidiaries to compete in any line of business or with any Person or in any area or territory;

(E) any partnership, joint venture, limited liability company arrangement or other similar agreement;

(F) any profit sharing, phantom stock award, stock option, stock purchase, stock appreciation, deferred compensation, issuance, or other plan or arrangement for the benefit of Limestone's or any of its Subsidiaries' current or former directors, officers, employees or consultants;

(G) any license agreement, either as licensor or licensee, or any other contract of any type relating to any intellectual property, except for license agreements relating to off-the-shelf software or software components pursuant to a non-negotiable standard form or “shrink wrap” license agreement;

(H) any contract with any insider of Limestone or any of its Subsidiaries or any arrangement under which Limestone or any of its Subsidiaries has advanced or loaned any amount to any of their respective insiders or immediate family member of any insider (the terms “insider” and “immediate family member” have the meanings given to them under Regulation O (12 C.F.R. Part 215) as promulgated by the FRB);

(I) any contract, whether exclusive or otherwise, with any sales agent, franchisee or distributor acting for and on behalf of Limestone and its Subsidiaries;

(J) other than this Agreement and any ancillary agreements being executed in connection with this Agreement, any contract providing for the acquisition or disposition of any portion of the assets, properties or securities of Limestone or any of its Subsidiaries, other than purchases and sales of securities by Limestone Bank in the ordinary course consistent with past practices and the obligations of Limestone under this Agreement;

(K) any contract that requires the payment of royalties;

(L) any contract pursuant to which Limestone or any of its Subsidiaries has any obligation to share revenues or profits derived from Limestone or any of its Subsidiaries with any other Person;

(M) any contract between (i) Limestone or any of its Subsidiaries, on the one hand, and any officer, director, employee or consultant of Limestone or any of its Subsidiaries, on the other hand, and (ii) Limestone or any of its Subsidiaries, on the one hand, and any Associate or other Affiliate of any director or executive officer of Limestone or any of its Subsidiaries or any Person known to be an Associate or other Affiliate of any employee of Limestone or any of its Subsidiaries, on the other hand; and

(N) any contract that is a “material contract” (as defined in Item 601(b)(10) of Regulation S-K of the SEC);

(O) any other legally binding contract not of the type covered by any of the other items of this Section 5.01(j) involving money or property and having an obligation in excess of \$50,000 in the aggregate in any period of 12 consecutive months and which is otherwise not in the ordinary and usual course of business.

(ii) “Material Contracts” shall mean those contracts on the Limestone Disclosure Schedule listed under Section 5.01(j)(i). True, complete and correct copies of



all of the Material Contracts have been made available to Peoples. All of the Material Contracts are in full force and effect and are legal, valid, binding and enforceable in accordance with their terms (A) as to Limestone or any of its Subsidiaries, as the case may be, and (B) to the Knowledge of Limestone, as to the other parties to such Material Contracts. Except as disclosed in Section 5.01(j) of the Limestone Disclosure Schedule, Limestone and/or its Subsidiaries, as applicable, and to the Knowledge of Limestone, each other party to the Material Contracts, is performing all material obligations, conditions and covenants required to be performed by it under the Material Contracts. Neither Limestone nor its Subsidiaries, and to the Knowledge of Limestone, no other party, is in violation, breach or default of any material obligation, condition or covenant under any of the Material Contracts, and neither Limestone nor its Subsidiaries, and to the Knowledge of Limestone, no other party, has received any notice that any of the Material Contracts will be terminated or will not be renewed. Neither Limestone nor any of its Subsidiaries has received from or given to any other Person any notice of default or other violation under any of the Material Contracts, nor, to the Knowledge of Limestone, does any condition exist or has any event occurred which with notice or lapse of time or both would constitute a default under any of the Material Contracts.

(k) Brokerage and Finder's Fees. Except as set forth in Section 5.01(k) of Limestone Disclosure Schedule, neither Limestone nor any of its Subsidiaries has engaged or employed any broker, finder, or agent, or agreed to pay or incurred any brokerage fee, finder's fee, commission or other similar form of compensation (including any break-up or termination fee) in connection with this Agreement or the transactions contemplated hereby.

(l) Employee Benefit Plans; Employee Matters.

(i) Section 5.01(l) of Limestone Disclosure Schedule contains a complete and accurate list of all bonus, incentive, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, restricted stock, stock option, severance, welfare and fringe benefit plans, employment, retention, change in control, severance agreements, and all similar practices, policies and arrangements, whether written or unwritten, that are currently effective or were in effect at any time in the previous five years, in which any employee or former employee (the "Employees"), consultant or former consultant (the "Consultants") or director or former director (the "Directors") of Limestone or any of its Subsidiaries or any ERISA Affiliate participates, sponsors or contributes, or to which any such Employees, Consultants or Directors are a party or under which Limestone or its Subsidiaries or any ERISA Affiliate has any present or future liability (the "Compensation and Benefit Plans"). Neither Limestone nor any of its Subsidiaries nor any ERISA Affiliate has any commitment to create any additional Compensation and Benefit Plan or to modify or change any existing Compensation and Benefit Plan. No Compensation and Benefit Plan holds any Limestone Common Stock.

(ii) Each Compensation and Benefit Plan has been operated and administered in all material respects in accordance with its terms and with applicable law, including, but not limited to, ERISA, the Code, the Securities Act, the Exchange Act, the Age Discrimination in Employment Act, or any regulations or rules promulgated

thereunder, and all filings, disclosures and notices required by ERISA, the Code, the Securities Act, the Exchange Act, the Age Discrimination in Employment Act and any other applicable law have been timely made. Each Compensation and Benefit Plan which is an “employee pension benefit plan” within the meaning of Section 3(2) of ERISA (a “Pension Plan”) and which is intended to be qualified under Section 401(a) of the Code has either received a favorable Determination Letter from the Internal Revenue Service (“IRS”), and no circumstances exist which are likely to result in revocation of any such favorable Determination Letter; or has been adopted on a pre-approved plan which has received a current opinion letter from the national office of the IRS. There is no pending or, to the Knowledge of Limestone, threatened legal action, suit or claim relating to the Compensation and Benefit Plans, except as set forth on Section 5.01(l) of Limestone Disclosure Schedule. Neither Limestone nor any of its Subsidiaries nor any ERISA Affiliate has engaged in a transaction, or omitted to take any action, with respect to any Compensation and Benefit Plan that would reasonably be expected to subject Limestone or any of its Subsidiaries or any ERISA Affiliate to a tax or penalty imposed by either Section 4975 of the Code or Section 502 of ERISA. To the Knowledge of Limestone, no event has occurred or circumstance exists that could result in a material increase in premium cost of a Compensation and Benefit Plan that is insured, or a material increase in benefit cost of such Compensation and Benefit Plans that are self-insured.

(iii) None of the Compensation and Benefit Plans is subject to Title IV of ERISA. No liability under Title IV of ERISA has been or is expected to be incurred by Limestone or any of its Subsidiaries with respect to any terminated “single-employer plan”, within the meaning of Section 4001(a)(15) of ERISA, formerly maintained by any of them, or any single-employer plan of any entity (an “ERISA Affiliate”) which is considered a single employer with Limestone under Section 4001(a)(14) of ERISA or Section 414(b) or (c) of the Code (an “ERISA Affiliate Plan”). None of Limestone, its Subsidiaries or any ERISA Affiliate has contributed, or has been obligated to contribute, to either a defined benefit pension plan subject to Title IV of ERISA or to a multiemployer plan under Subtitle E of Title IV of ERISA at any time since September 26, 1980. No notice of a “reportable event,” within the meaning of Section 4043 of ERISA, has been required to be filed for any Compensation and Benefit Plan or by any ERISA Affiliate Plan. To the Knowledge of Limestone, there is no pending investigation or enforcement action by the U.S. Department of Labor or the IRS or any other Governmental Authority with respect to any Compensation and Benefit Plan.

(iv) All contributions required to be made by Limestone under the terms of any Compensation and Benefit Plan or ERISA Affiliate Plan or any employee benefit arrangements under any collective bargaining agreement to which Limestone or any of its Subsidiaries was or is a party have been timely made or have been reflected in accordance with GAAP on the financial statements in Limestone SEC Reports.

(v) Except as otherwise provided under Section 6.10(b), neither Limestone nor any of its Subsidiaries has any obligations to provide retiree health and life insurance or other retiree death benefits under any Compensation and Benefit Plan, other than benefits mandated by Section 4980B of the Code, and each such Compensation and Benefit Plan may be amended or terminated without incurring liability thereunder. There

has been no communication to Employees by Limestone or its Subsidiaries that would reasonably be expected to promise or guarantee such Employees' retiree health or life insurance or other retiree death benefits on a permanent basis.

(vi) Limestone and each of its Subsidiary has not incurred (whether or not assessed) and is not reasonably expected to incur or to be subject to, any Tax or other penalty with respect to the reporting requirements under Sections 6055 and 6056 of the Code, as applicable, or under Section 4980B, 4980D or 4980H of the Code.

(vii) Neither Limestone, any of its Subsidiaries nor any ERISA Affiliate maintain any Compensation and Benefit Plans covering leased or foreign (*i.e.*, non-United States) Employees, independent contractors or non-employees.

(viii) With respect to each Compensation and Benefit Plan, if applicable, Limestone has provided or made available to Peoples, true and complete copies of existing (A) Compensation and Benefit Plan documents and amendments thereto, including a written description of any Compensation and Benefit Plan or any other employee benefit obligation that is not otherwise in writing, and all board actions approving the same, (B) trust instruments and insurance contracts, including renewal notices, (C) the three most recent Forms 5500 filed with the IRS (including all schedules thereto and the opinions of independent accountants), (D) the most recent actuarial report and financial statement, (E) the most recent summary plan description, wrap document and summaries of material modifications, (F) any notices or forms to or from the IRS, Department of Labor, the PBGC (other than for premium payments) or any other Governmental Authority, (G) the most recent determination letter or opinion letter issued by the IRS, (H) any Form 5310 or Form 5330 filed with the IRS, (I) the most recent nondiscrimination tests performed under ERISA and the Code (including 401(k) and 401(m) tests), and (J) all contracts with third party administrators, actuaries, investment managers, compensation consultants and other independent contractors that relate to a Compensation and Benefit Plan.

(ix) Except as set forth on Section 5.01(l) of the Limestone Disclosure Schedules, the consummation of the transactions contemplated by this Agreement would not, directly or indirectly (including, without limitation, as a result of any termination of employment prior to or following the Effective Time) reasonably be expected to (A) entitle any Employee, Consultant or Director to any payment (including severance pay or similar compensation) or any increase in compensation, (B) result in the vesting or acceleration of any benefits under any Compensation and Benefit Plan, or (C) result in any material increase in benefits payable under any Compensation and Benefit Plan.

(x) Neither Limestone nor any of its Subsidiaries or any ERISA Affiliate maintains any compensation plans, programs or arrangements the payments under which would not reasonably be expected to be deductible as a result of the limitations under Section 162(m) of the Code and the Treasury regulations issued thereunder.

(xi) As a result, directly or indirectly, of the transactions contemplated by this Agreement (including, without limitation, as a result of any termination of employment prior to or following the Effective Time), none of Peoples, Limestone or the Surviving Corporation, or any of their respective Subsidiaries will be obligated to make a

payment that would be characterized as an “excess parachute payment” to an individual who is a “disqualified individual” (as such terms are defined in Section 280G of the Code and applicable regulations thereunder) of Limestone on a consolidated basis or which would violate 12 U.S.C. Section 1828(k) or regulations thereunder.

(xii) Limestone and each of its Subsidiaries are and during the previous five years have been, in compliance in all material respects with all applicable federal, state and local laws, regulations, ordinances and rulings respecting employment and employment practices, terms and conditions of employment, and wages and hours, including, without limitation, any such laws respecting employment discrimination and occupational safety and health requirements, and (i) none of Limestone or any of its Subsidiaries are engaged in any unfair labor practice or other employment and/or wage-related policy, practice or action in violation in any material respect of any federal, state or local law, regulation, ordinance or ruling pertaining to labor practices, including without limitation those related to wages and hours under the Fair Labor Standards Act (FLSA), and (ii) there is no unfair labor practice or employment-related complaint against Limestone or any of its Subsidiaries pending or, to the knowledge of Limestone, threatened before any state or federal court, the National Labor Relations Board, the Equal Employment Opportunity Commission (EEOC) or any other federal, state or local administrative body relating to employment or employment-related policies, practices or conditions.

(xiii) Each Compensation and Benefit Plan that is a “nonqualified deferred compensation plan” (as defined under Section 409A(d)(1) of the Code) complies with an has been established, documented, operated and maintained in form and operation, in accordance with Section 409A of the Code and the Treasury Regulations and other official guidance issued thereunder and no amounts under any such nonqualified deferred compensation plan is or has been subject to the interest and additional tax set forth under Section 409A(a)(1)(B) of the Code. Neither Limestone nor any of its Subsidiaries has any actual or potential obligation to indemnify, reimburse or otherwise gross-up any Person for any taxes, interest or penalties that may be imposed, incurred or accelerated under Section 409A or 4999 of the Code.

(m) Labor Matters. Neither Limestone nor any of its Subsidiaries is a party to or is bound by any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor organization, nor is Limestone or any of its Subsidiaries the subject of a proceeding asserting that it or any such Subsidiary has committed an unfair labor practice (within the meaning of the National Labor Relations Act) or seeking to compel Limestone or any such Subsidiary to bargain with any labor organization as to wages or conditions of employment, nor is there any strike or other labor dispute involving it or any of its Subsidiaries pending or, to Limestone’s Knowledge, threatened, nor is Limestone aware of any activity involving its or any of its Subsidiaries’ employees seeking to certify a collective bargaining unit or engaging in other organizational activity. Limestone and its Subsidiaries are in compliance in all material respects with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours.



(n) Takeover Laws. Limestone has taken all action required to be taken by Limestone in order to exempt this Agreement, the Support Agreements and the transactions contemplated hereby and thereby from, and this Agreement, the Support Agreements and the transactions contemplated hereby and thereby are exempt from, (i) the requirements of any “moratorium,” “control share,” “fair price,” “affiliate transaction,” “business combination” or other anti-takeover laws and regulations of the Commonwealth of Kentucky including Sections 271B.12-200 through 271B.12-220 of the KBCA (“Takeover Laws”), and (ii) any applicable provisions of the Limestone Articles, the Limestone Bylaws and/or the governing documents of any Limestone Subsidiary.

(o) Environmental Matters. Neither the conduct nor the operation of Limestone or any of its Subsidiaries nor any condition of any property presently or previously owned, leased or operated by any of them (including, without limitation, in a fiduciary or agency capacity), or on which any of them holds a Lien, to the Knowledge of Limestone, violates or violated Environmental Laws and to Limestone’s Knowledge, no condition exists or has existed or event has occurred with respect to any of them or any such property that is reasonably likely to result in liability under Environmental Laws. Neither Limestone nor any of its Subsidiaries has received any notice from any Person that Limestone or its Subsidiaries or the operation or condition of any property ever owned, leased, operated, or held as collateral or in a fiduciary capacity by any of them are or were in violation of or otherwise are alleged to have liability under any Environmental Law, including, but not limited to, responsibility (or potential responsibility) for the cleanup or other remediation of any Hazardous Materials at, on, beneath, or originating from any such property.

(p) Tax Matters.

(i)(A) All Tax Returns that were or are required to be filed by or with respect to Limestone and its Subsidiaries have been duly and timely filed, or an appropriate extension has been granted, and all such Tax Returns are true, correct and complete in all material respects, (B) all Taxes due (whether or not required to be shown to be due on the Tax Returns referred to in clause (i)(A) of this Section 5.01(p)) have been paid in full, and (C) no unexpired waivers of statutes of limitation have been given by or requested with respect to any Taxes of Limestone or its Subsidiaries. Limestone has made available to Peoples true and correct copies of the United States federal income Tax Returns filed by Limestone and its Subsidiaries for each of the three most recent fiscal years. Neither Limestone nor any of its Subsidiaries has any liability with respect to any Taxes in excess of the amounts accrued with respect thereto that are reflected in the financial statements in Limestone SEC Reports or that have arisen in the ordinary and usual course of business since December 31, 2018. The accruals and reserves for Taxes reflected in financial statements in Limestone SEC Reports are adequate for the periods covered. There are no Liens for Taxes upon the assets of Limestone or any of its Subsidiaries other than Liens for current Taxes not yet due and payable.

(ii) No Tax is required to be withheld pursuant to Section 1445 of the Code as a result of the transactions contemplated by this Agreement.

(iii) Limestone and its Subsidiaries have withheld or collected and paid over to the appropriate Governmental Authorities, or are properly holding for such payment, all Taxes required by law to be withheld or collected.

(iv) No claim has ever been made by any Governmental Authority in a jurisdiction where Limestone or any of its Subsidiaries do not file Tax Returns that Limestone or any of its Subsidiaries is or may be subject to taxation by that jurisdiction nor is there any factual basis for any such claim.

(v) Neither Limestone nor any of its Subsidiaries has applied for any ruling from any Governmental Authority with respect to Taxes nor entered into a closing agreement (or similar arrangement) with any Governmental Authority.

(vi) Neither Limestone nor any of its Subsidiaries has been audited by any Governmental Authority for taxable years ending on or subsequent to December 31, 2015. No Tax audit or administrative or judicial Tax proceedings of any Governmental Authority are pending or being conducted with respect to Limestone or any of its Subsidiaries and, to the Knowledge of Limestone, no such audit or other proceeding has been threatened. No Governmental Authority has asserted, is now asserting, or, to the Knowledge of Limestone, is threatening to assert against Limestone or any of its Subsidiaries any deficiency or claim for additional Taxes.

(vii) Neither Limestone nor any of its Subsidiaries (A) is a party to any Tax allocation or sharing agreement (other than a tax allocation agreement between and among Limestone and its Subsidiaries), (B) has ever been a member of an affiliated group of corporations, within the meaning of Section 1504 of the Code, other than an affiliated group of which Limestone is or was the common parent corporation (the "Limestone Group"), or (C) has any liability for the Taxes of any Person (other than members of the Limestone Group) as a transferee or successor, by contract, or otherwise.

(viii) Neither Limestone nor any of its Subsidiaries has agreed to any extension of time with respect to any Tax Return or a Tax assessment or deficiency, and no such extension of time has been requested.

(ix) Neither Limestone nor any of its Subsidiaries has agreed, nor is it required, to make any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise that will affect its liability for Taxes.

(x) Except as set forth on Section 5.01(p) of the Limestone Disclosure Schedule, there are no joint ventures, partnerships, limited liability companies, or other arrangements or contracts to which Limestone or its Subsidiaries is a party that could be treated as a partnership for Tax purposes.

(xi) Except as set forth on Section 5.01(p) of the Limestone Disclosure Schedule, neither Limestone nor any of its Subsidiaries is a party to any agreement, contract, arrangement or plan that has resulted, or could result, individually or in the aggregate, in the payment of "excess parachute payments" within the meaning of Section 280G of the Code.

(xii) None of the assets of the Bank are “tax exempt use property” or “tax exempt bond financed property” within the meaning of Section 168 of the Code and the Bank is not a party to a “long-term contract” within the meaning of Section 460 of the Code.

(xiii) Limestone has not taken any action and is not aware of any fact or circumstance that would reasonably be expected to prevent the Parent Merger from qualifying as a “reorganization” within the meaning of Section 368(a) of the Code.

(q) Risk Management Instruments. Neither Limestone nor any of its Subsidiaries is a party to or otherwise bound by any interest rate swaps, caps, floors, option agreements, futures or forward contracts or other similar risk management arrangements.

(r) Books and Records. The books of account, minute books, stock record books, and other records of Limestone and its Subsidiaries, all of which have been made available to Peoples, are complete and correct in all material respects and have been maintained in accordance with sound business practices and, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Limestone and its Subsidiaries, including the maintenance of an adequate system of internal controls that is sufficient to provide reasonable assurances that transactions are executed in accordance with management’s authorization, that transactions are recorded as necessary, that access to assets is permitted only in accordance with management’s authorization, and that the recorded accountability for assets is compared at reasonable intervals and appropriate action is taken with respect to any differences. The minute books of Limestone and its Subsidiaries contain accurate and complete records of all meetings held of, and corporate action taken by, the shareholders, the Limestone Board and the governing bodies of its Subsidiaries, and committees of the Limestone Board and the governing bodies of its Subsidiaries, and no meeting of any such shareholders, Limestone Board and the governing bodies of its Subsidiaries, or committee has been held for which minutes have been prepared and are not contained in such minute books (other than minutes of immediately preceding meetings to be submitted and approved at the next regularly scheduled meeting of such governing body or committee).

(s) Insurance. Section 5.01(s) of the Limestone Disclosure Schedule sets forth all of the insurance policies, binders, or bonds maintained by Limestone or its Subsidiaries. Limestone and its Subsidiaries are insured with reputable insurers against such risks and in such amounts as is prudent in accordance with safe and sound industry practices. All such insurance policies are in full force and effect; Limestone and its Subsidiaries are not in material default thereunder, all claims thereunder have been filed in due and timely fashion and Limestone and its Subsidiaries will cause to be filed in due and timely fashion any claims that have not yet been filed as of the date of this Agreement or which arise before the Effective Time of the Parent Merger.

(t) Title to Real Property and Assets.

(i) Section 5.01(t) of the Limestone Disclosure Schedule lists and describes all real property, and any leasehold interest in real property, owned or held by Limestone or its Subsidiaries. Limestone and its Subsidiaries have good and marketable title, free and clear of all Liens, to all of the properties and assets, real and personal, reflected on the

financial statements in Limestone SEC Reports as being owned by Limestone as of December 31, 2021, or acquired after such date, except (A) statutory Liens for amounts not yet due and payable, (B) pledges to secure deposits and other Liens incurred in the ordinary course of banking business, (C) with respect to real property, such imperfections of title, easements, encumbrances, Liens, charges, defaults or equitable interests, if any, as do not affect the use of properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties, and (D) dispositions and encumbrances in the ordinary course of business. No portion of any real property owned by Limestone or its Subsidiaries is (A) operated as a nonconforming use under applicable zoning codes, (B) located in either a “Special Flood Hazard Area” pursuant to the Federal Insurance Rate Maps created by the Federal Emergency Management Agency or an area which is inundated by a “100 year” flood as provided by any Governmental Authority.

(ii) Each lease agreement set forth on Section 5.01(t) of the Limestone Disclosure Schedule is, as to Limestone and its Subsidiaries, as the case may be, and, to the Knowledge of Limestone, as to the other parties thereto, valid, legally binding, in full force and effect, and enforceable in accordance with its terms. There is not under any such lease agreements any default by Limestone or its Subsidiaries, or to the Knowledge of Limestone, to the other party under any such lease agreement which with notice or lapse of time, or both, would constitute a default. The consummation of the transactions contemplated hereby will not result in a breach or default under any such lease agreements. Neither Limestone nor any of its Subsidiaries has received written notice that the landlord under such lease agreements, as applicable, would refuse to renew such lease agreement upon expiration of the period thereof upon substantially the same terms, except for rent increases consistent with past experience or market rentals.

(iii) The real property owned or leased by Limestone or its Subsidiaries complies in all material respects with all applicable private agreements, zoning codes, ordinances and requirements and other governmental laws and regulations relating thereto and there are no litigation or condemnation proceedings pending or, to Limestone’s Knowledge, threatened with respect to any such real property. All licenses and permits necessary for the occupancy and use of the real property owned or leased by Limestone or its Subsidiaries, as used in the ordinary course, consistent with past practices of Limestone and its Subsidiaries, have been obtained and are in full force and effect. All buildings, structures and improvements located on, fixtures contained in, and appurtenances attached to the real property owned or leased by Limestone or its Subsidiaries are in good condition and repair, subject to normal wear and tear, and no condition exists which materially interferes with the economic value or use thereof.

(iv) All leases pursuant to which Limestone or its Subsidiaries, as lessee, leases personal property (except for leases that have expired by their terms or that Limestone or its Subsidiaries has agreed to terminate since the date hereof) are valid without default thereunder by the lessee or, to Limestone’s Knowledge, the lessor.

(u) Loans.



(i) The allowance for loan and lease losses as reflected on Limestone's most financial statements filed with the SEC was, in the reasonable opinion of Limestone's management, (A) adequate to meet all reasonably anticipated loan and lease losses, net of recoveries related to loans previously charged off as of those dates, (B) consistent with GAAP and reasonable and sound banking practices and (C) in conformance with recommendations and comments in reports of examination in all material respects.

(ii) Each loan, loan agreement, note or borrowing arrangement (including leases, credit enhancements, commitments, guarantees and interest-bearing assets) (collectively, "Loans") of Limestone and Limestone Subsidiaries (A) is evidenced by notes, agreements or other evidences of indebtedness that are true, genuine and what they purport to be, (B) to the extent carried on the books and records of Limestone and Limestone Subsidiaries as a secured Loan, has been secured by valid charges, mortgages, pledges, security interests, restrictions, claims, liens or encumbrances, as applicable, which have been perfected and (C) to the Knowledge of Limestone, is the legal, valid and binding obligation of the obligor named therein, enforceable in accordance with its terms, subject to enforceability as may be limited by bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the rights of creditors generally and the availability of equitable remedies. Section 5.01(u) of the Limestone Disclosure Schedule lists each Loan that has as of the date hereof an outstanding balance of \$500,000 or more and that (A) is over 90 days or more delinquent in payment of principal or interest, (B) is classified by Limestone or its Subsidiaries as "Other Loans Specially Mentioned," "Special Mention," "Substandard," "Doubtful," "Loss," "Classified," "Criticized," "Watch List" or words of similar import, (C) has undergone troubled debt restructuring, or (D) is entirely or predominantly unsecured.

(iii) Each outstanding Loan of Limestone and the Limestone Subsidiaries (including Loans held for resale to investors) was solicited and originated, and is and has been administered and, where applicable, serviced, and the relevant Loan files are being maintained, in all material respects in accordance with the relevant notes or other credit or security documents, the written underwriting standards of Limestone and the Limestone Subsidiaries (and, in the case of Loans held for resale to investors, the underwriting standards, if any, of the applicable investors) and with all applicable federal, state and local laws, regulations and rules.

(iv) None of the agreements pursuant to which Limestone or any of the Limestone Subsidiaries has sold Loans or pools of Loans, or participations in Loans or pools of Loans, contains any obligation to repurchase the Loans or interests therein solely on account of a payment default by the obligor on the Loan (other than first payment defaults and other than mortgage Loans sold to government sponsored entities).

(v) There are no outstanding Loans made by Limestone or any of the Limestone Subsidiaries to any "executive officer" or other "insider" (as each term is defined in Regulation O promulgated by the FRB) of Limestone or the Limestone Subsidiaries, other than Loans that are subject to and that were made and continue to be in compliance with Regulation O or that are exempt therefrom, which are listed in Section 5.01(u) of the Limestone Disclosure Schedule.

(vi) Neither Limestone nor any of the Limestone Subsidiaries is (A) now nor has it ever been since January 1, 2018, subject to any fine, suspension, settlement or other contract or other administrative agreement or sanction by, or any reduction in any loan purchase commitment from, any Governmental Authority or Regulatory Authority relating to the origination, sale or servicing of mortgage or consumer Loans, and (B) aware of any actual or threatened claim, proceeding or investigation with respect thereto by any Person.

(vii) Without limitation of the foregoing, Limestone and each of its Subsidiaries have complied in all material respects with and are not in material default or violation under any applicable provision of, or any applicable regulation, policy and/or guideline of any Governmental Authority promulgated under or relating to, the CARES Act. Section 5.01(u) of the Limestone Disclosure Schedule lists (A) each Loan of Limestone or any Limestone Subsidiary as of the date of this Agreement that was made in connection with the Paycheck Protection Program established under the CARES Act, and (B) each Loan of Limestone and the Limestone Subsidiaries that is subject to payment deferral or otherwise has undergone troubled debt restructuring under the CARES Act as of the date of this Agreement (including all outstanding amounts and the expiration date for any deferral or other modification) (each Loan referred to in (C) a “CARES Act Modified Loan”). For purposes of this Agreement, “CARES Act” means, collectively, the Coronavirus Aid, Relief, and Economic Security Act, as amended, any extension thereof, and any other economic stimulus or other laws, rules, and regulations related to the Pandemic.

(v) Repurchase Agreements. With respect to all agreements pursuant to which Limestone or its Subsidiaries has purchased securities subject to an agreement to resell, if any, Limestone or any of its Subsidiaries, as the case may be, has a valid, perfected first Lien in or evidence of ownership in book entry form of the government securities or other collateral securing the repurchase agreement, and the value of such collateral equals or exceeds the amount of the debt secured thereby.

(w) Investment Securities Portfolio. All investment securities held by Limestone or its Subsidiaries, as reflected in the financial statements in Limestone SEC Reports, are carried in accordance with GAAP consistent with the applicable guidelines issued by the Regulatory Authorities. Limestone or any of its Subsidiaries, as applicable, have good, valid and marketable title to all securities held by them, respectively, except securities held in any fiduciary or agency capacity, free and clear of any Lien, except as set forth in the financial statements in Limestone SEC Reports and except to the extent any such securities are pledged in the ordinary course of business consistent with prudent banking practices to secure obligations of Limestone or its Subsidiaries.

(x) Deposit Insurance. All of the deposits held by Limestone or any Limestone Subsidiary (including the records and documentation pertaining to the held deposits) have been established and are held in compliance in all material respects with (i) all applicable policies, practices and procedures of Limestone or the Limestone Subsidiary, as applicable and (ii) all applicable laws. The deposit accounts of Limestone and any Limestone Subsidiary are insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by law, all premiums and assessments required to be paid in connection therewith have been paid when due, and no

proceedings for the termination or revocation of the insurance are pending or, to Limestone's Knowledge, threatened.

(y) Information Security. No third party has gained unauthorized access to any information systems or networks controlled by or material to the operation of the business of Limestone and the Limestone Subsidiaries (including without limitation any information system or networks owned or controlled by any third party (a "Third Party System")), and there are no data security or other technological vulnerabilities with respect to its information technology systems or networks or, to Limestone's Knowledge, any Third Party System material to the operation of the business of Limestone and the Limestone Subsidiaries, in each case that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Limestone. Limestone maintains an information privacy and security program that maintains reasonable measures designed to protect the privacy, confidentiality and security of all data or information that constitutes personal data or personal information under applicable law against any (i) loss or misuse of the data, (ii) unauthorized or unlawful operations performed upon the data, or (iii) other act or omission that compromises the security or confidentiality of the data.

(z) Bank Secrecy Act, Anti-Money Laundering and OFAC and Customer Information. Limestone is not aware of, has not been advised of, and has no reason to believe that any facts or circumstances exist, which would cause Limestone or any of its Subsidiaries to be deemed (i) to be operating in violation in any material respect of the Bank Secrecy Act, the Patriot Act, any order issued with respect to anti-money laundering by the Treasury's Office of Foreign Assets Control, or any other applicable anti-money laundering law, or (ii) not to be in satisfactory compliance in any material respect with the applicable privacy and customer information requirements contained in any federal and state privacy laws, including without limitation, in Title V of the Gramm-Leach-Bliley Act. Limestone is not aware of any facts or circumstances that would cause Limestone to believe that any non-public customer information has been disclosed to or accessed by an unauthorized third party in a manner that would cause Limestone or any of its Subsidiaries to undertake any material remedial action. The Limestone Board (or, where appropriate, the governing bodies of its Subsidiaries) has adopted and implemented an anti-money laundering program that contains adequate and appropriate customer identification verification procedures that comply with the Patriot Act and such anti-money laundering program meets the requirements of the Patriot Act and the regulations thereunder, and Limestone (or its Subsidiaries) has complied in all material respects with any requirements to file reports and other necessary documents as required by the Patriot Act and the regulations thereunder.

(aa) CRA Compliance. Neither Limestone nor any of its Subsidiaries has received any notice of non-compliance with the applicable provisions of the Community Reinvestment Act and the regulations promulgated thereunder, and Limestone Bank has received a CRA rating of satisfactory or better as a result of its most recent CRA examination. Neither Limestone nor any of its Subsidiaries has Knowledge of any fact or circumstance or set of facts or circumstances which could cause Limestone or any of its Subsidiaries to receive notice of non-compliance with such provisions or cause the CRA rating of any Limestone Subsidiary to fall below "satisfactory."

(bb) Related Party Transactions. Neither Limestone nor any of its Subsidiaries has entered into any transactions with any Affiliate of Limestone or its Subsidiaries or any Affiliate

of any director or executive officer of Limestone or its Subsidiaries (collectively, the “Related Parties”) except banking transactions in the ordinary course of the Limestone Bank’s business and compliance with applicable banking law pertaining to insider and affiliate transactions including but not limited Sections 23A and 23B of the Federal Reserve Act, Regulation O (12 C.F.R. Part 215) and Regulation W (12 C.F.R. Part 223). None of the Related Parties presently (i) owns, directly or indirectly, any interest in (excepting not more than 5% stock holdings for investment purposes in securities of publicly held and traded companies), or is an officer, director, employee or consultant of, any Person which is, or is engaged in business as, a competitor, lessor, lessee, customer, distributor, sales agent, or supplier of Limestone or any of its Affiliates, (ii) owns, directly or indirectly, in whole or in part, any tangible or intangible property that Limestone or any of its Subsidiaries uses or the use of which is necessary for conduct of their business, (iii) has brought any action against, or owes any amount to, Limestone or its Subsidiaries (excepting amounts owed under loans made by Limestone Bank in the ordinary course and in compliance applicable banking laws), or (iv) on behalf of Limestone or any of its Subsidiaries, has made any payment or commitment to pay any commission, fee or other amount to, or purchase or obtain or otherwise contract to purchase or obtain any goods or services from, any other Person of which any executive officer or director of Limestone or its Subsidiaries, is a partner or stockholder (excepting stock holdings solely for investment purposes in securities of publicly held and traded companies and excepting banking transactions in the ordinary course of Limestone Bank’s banking business and in compliance applicable banking laws). Section 5.01(bb) of the Limestone Disclosure Schedule contains (i) a complete list of all contracts between Limestone, its Subsidiaries and any Related Party (collectively, the “Related Party Agreements”) entered into on or prior to the date of this Agreement or contemplated under this Agreement to be entered into before the Effective Date (other than those contracts entered into after the date of this Agreement for which Peoples has given its prior written consent) and (ii) a complete list of all insider loans under Regulation O (12 C.F.R. Part 215). The Bank is not party to any transaction with any Related Party on other than arm’s-length terms.

(cc) Prohibited Payments. None of Limestone, or the Limestone Subsidiaries, or to the Knowledge of Limestone, any director, officer, employee, agent or other Person acting on behalf of Limestone or any of the Limestone Subsidiaries has, directly or indirectly, (i) used any funds of Limestone or any of the Limestone Subsidiaries for unlawful contributions, unlawful gifts, unlawful entertainment or other expenses relating to political activity, (ii) made any unlawful payment to foreign or domestic governmental officials or employees or to foreign or domestic political parties or campaigns from funds of Limestone or any of the Limestone Subsidiaries, (iii) violated the Foreign Corrupt Practices Act of 1977, as amended, or any similar law, (iv) established or maintained any unlawful fund of monies or other assets of Limestone or any of the Limestone Subsidiaries, (v) made any fraudulent entry on the books or records of Limestone or any of the Limestone Subsidiaries, or (vi) made any unlawful bribe, unlawful rebate, unlawful payoff, unlawful influence payment, unlawful kickback or other unlawful payment to any Person, private or public, regardless of form, whether in money, property or services, to obtain favorable treatment in securing business to obtain special concessions for Limestone or any of the Limestone Subsidiaries, to pay for favorable treatment for business secured or to pay for special concessions already obtained for Limestone or any of the Limestone Subsidiaries, or is currently subject to any United States sanctions administered by the Office of Foreign Assets Control of the United States Treasury Department.



(dd) Fairness Opinion. The Limestone Board has received the written opinion of Piper Sandler, to the effect that, as of the date hereof, the Merger Consideration to be received by the Limestone shareholders in the Parent Merger is fair to the holders of Limestone Common Stock from a financial point of view.

(ee) Absence of Undisclosed Liabilities. Neither Limestone nor any of its Subsidiaries has any liability (whether accrued, absolute, contingent or otherwise) that, either individually or when combined with all liabilities as to similar matters, would have a Material Adverse Effect on Limestone on a consolidated basis, except as disclosed in the financial statements in Limestone SEC Reports.

(ff) Material Adverse Effect. Limestone has not, on a consolidated basis, suffered a change in its business, financial condition or results of operations since December 31, 2021, that has had or could reasonably be expected to have a Material Adverse Effect on Limestone.

(gg) Tax Treatment of Merger. As of the date of this Agreement, Limestone is not aware of any fact or state of affairs relating to Limestone that could cause the Parent Merger not to be treated as a “reorganization” under Section 368(a) of the Code.

(hh) Limestone Information. The information provided in writing by Limestone relating to Limestone and its Subsidiaries that is to be contained in the Registration Statement, the Joint Proxy Statement/Prospectus, any filings or approvals under applicable state securities laws, any filing pursuant to Rule 165 or Rule 425 under the Securities Act or Rule 14a-12 under the Exchange Act, or in any other document filed with any other Governmental Authorities in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they are made, not misleading and will comply in all material respects with the provisions of the Securities Act, the Exchange Act, the rules and regulations thereunder, and any other governing laws or regulations, as applicable. No representation or warranty by Limestone, and no statement by Limestone in any certificate, agreement, schedule or other document furnished or to be furnished in connection with the transactions contemplated by this Agreement, was or will be inaccurate, incomplete or incorrect in any material respect as of the date furnished or contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty or statement not misleading to Peoples.

**5.02 Representations and Warranties of Peoples.** Except as disclosed in the disclosure schedule delivered by Peoples to Limestone concurrently herewith to the extent applicable (the “Peoples Disclosure Schedule”); provided that (i) the mere inclusion of an item in the Peoples Disclosure Schedule as an exception to a representation or warranty shall not be deemed an admission by Peoples that such item represents a material exception or fact, event or circumstance or that such item is reasonably likely to result in a Material Adverse Effect and (iii) any disclosures made with respect to a section of Article V shall be deemed to qualify any other section of Article V specifically referenced or cross-referenced, Peoples hereby represents and warrants to Limestone as follows:

(a) Organization, Standing and Authority.

(i) Peoples is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio and is a financial holding company duly registered with the FRB under the BHC Act. Peoples has the corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted in all material respects. Peoples is duly qualified to do business and is in good standing in any foreign jurisdictions where its ownership or leasing of property or assets or the conduct of its business requires it to be so qualified.

(ii) Except, in the case of clauses (B) and (C) only, as would not reasonably be likely to have, individually or in the aggregate, a Material Adverse Effect on Peoples, each Subsidiary of Peoples (A) is duly organized and validly existing under the laws of its jurisdiction of organization, (B) is duly licensed or qualified to do business and, where such concept is recognized under applicable law, in good standing in all jurisdictions (whether federal, state, local or foreign) where its ownership, leasing or operation of property or the conduct of its business requires it to be so licensed or qualified or in good standing and (C) has all requisite corporate power and authority to own, lease or operate its properties and assets and to carry on its business as now conducted. There are no restrictions on the ability of any Subsidiary of Peoples to pay dividends or distributions, except, in the case of a Subsidiary that is an insured depository institution, for restrictions on dividends or distributions generally applicable to all such regulated entities. The deposit accounts of Peoples Bank are insured by the FDIC through the Deposit Insurance Fund to the fullest extent permitted by law, all premiums and assessments required to be paid in connection therewith have been paid when due, and no proceedings for the termination of such insurance are pending or, to the Knowledge of Peoples, threatened.

(b) Capital Structure of Peoples. As of September 30, 2022, the authorized capital stock of Peoples consisted of 50,000,000 Peoples Common Shares, of which 28,278,078 shares were outstanding and 50,000 shares of preferred stock, without par value, none of which were outstanding. The outstanding Peoples Common Shares have been duly authorized, are validly issued and outstanding, fully paid and nonassessable, and were not issued in violation of any preemptive rights. As of September 30, 2022, Peoples had available the following number of Peoples Common Shares for issuance (i) 356,163 for the Peoples Equity Plan, (ii) 333,943 for its dividend reinvestment plan, (iii) 37,745 for the Peoples Board Deferred Compensation Plan, and (iv) 178,873 for the Peoples Employee Stock Purchase Plan. No shares of preferred stock of Peoples are issued and outstanding or reserved for issuance. As of September 30, 2022, 1,638,574 Peoples Common Shares were held in treasury by Peoples.

(c) Ownership of Limestone Common Stock. As of the date of this Agreement, Peoples and its Subsidiaries do not beneficially own any of the outstanding Limestone Common Stock.

(d) Authority; No Violation.

(i) Peoples has full corporate power and authority to execute and deliver this Agreement and, subject to the shareholder and other actions described below, to consummate the transactions contemplated hereby. The execution and delivery of this

Agreement and the consummation of the Parent Merger and the Subsidiary Bank Merger have been duly and validly approved by the Board of Directors of Peoples. The Board of Directors Peoples has determined that the Parent Merger, on the terms and conditions set forth in this Agreement, is in the best interests of Peoples and its shareholders and has adopted a resolution to the foregoing effect. Except for the approval of this Agreement, and the transactions contemplated herein, by the affirmative vote of the holders of a majority of the outstanding shares of Peoples Common Shares (the “Requisite Peoples Vote”), and the adoption and approval of the Subsidiary Bank Merger Agreement by Peoples, as Peoples Bank sole shareholder, no other corporate proceedings on the part of Peoples are necessary to approve this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Peoples and (assuming due authorization, execution and delivery by Peoples) constitutes a valid and binding obligation of Peoples, enforceable against Peoples in accordance with its terms (except in all cases as enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization). The Peoples Common Shares to be issued in the Parent Merger have been validly authorized and, when issued, will be validly issued, fully paid and nonassessable, and no current or past shareholder of Peoples will have any preemptive right or similar rights in respect thereof.

(ii) Neither the execution and delivery of this Agreement by Peoples, nor the consummation by Peoples of the transactions contemplated hereby, including the Merger and the Subsidiary Bank Merger, nor compliance by Peoples with any of the terms or provisions hereof, will (A) violate any provision of the Peoples Articles or the Peoples Regulations, or (B) assuming that the consents and approvals referred to in Section 5.02(e) are duly obtained, (1) violate any statute, code, ordinance, rule, regulation, judgment, order, writ, decree or injunction applicable to Peoples, any of the Peoples Subsidiaries or any of their respective properties or assets or (2) violate, conflict with, result in a breach of any provision of or the loss of any benefit under, constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) under, result in the termination of or a right of termination or cancellation under, accelerate the performance required by, or result in the creation of any Lien upon any of the respective properties or assets of Peoples or any of the Peoples Subsidiaries under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease, agreement or other instrument or obligation to which Peoples or any of the Peoples Subsidiaries is a party, or by which they or any of their respective properties or assets may be bound, except (in the case of clause (2) above) for such violations, conflicts, breaches or defaults which would not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Peoples.

(e) Consents and Regulatory Approvals.

(i) No consents or approvals of, or filings or registrations with, any Governmental Authority or with any third party are required to be made or obtained by Peoples or any of its Subsidiaries in connection with the execution, delivery or performance by Peoples of this Agreement or the consummation of the transactions contemplated hereby, including the Merger, except for (A) the filings of applications, waivers or notices, as applicable, with Regulatory Authorities to approve the transactions contemplated by the

Agreement, (B) the filing the Registration Statement, (C) Requisite Limestone Vote and Requisite Peoples Vote, (D) the filing of the certificate of merger with the OSS pursuant to the OGCL and articles of merger with the KSS pursuant to the KBCA, and filing the Subsidiary Bank Merger Certificates, (E) any approvals and notices required with respect to the Peoples Common Shares to be issued as part of the Merger Consideration under the rules of NASDAQ and (f) the receipt of the approvals set forth in Section 7.01(b).

(ii) As of the date hereof, Peoples is not aware of any reason why the approvals set forth in Section 7.01(b) will not be received without the imposition of a condition, restriction or requirement of the type described in Section 7.01(b).

(iii) As of the date hereof, there is no dispute or other proceeding pending between Peoples or Peoples Bank or any of their Subsidiaries and any community groups relating to Peoples or Peoples Bank, and, to the Peoples' Knowledge, no such dispute or other proceeding as been threatened, in each case, that could reasonably be expected to materially delay the receipt of, or impair the ability to obtain, any regulatory approval required to be obtained by Peoples to consummate the transactions contemplated by this Agreement.

(f) SEC Reports.

(i) Peoples has timely filed all reports, registration statements, proxy statements and other materials, together with any amendments required to be made with respect thereto, that it was required to file with the SEC, and all such reports, registration statements, proxy statements, other materials and amendments have complied in all material respects with all legal requirements relating thereto, and has paid all fees and assessments due and payable in connection therewith.

(ii) An accurate and complete copy of each final registration statement, prospectus, report, schedule and definitive proxy statement filed with or furnished to the SEC by Peoples pursuant to the Securities Act or the Exchange Act prior to the date of this Agreement (the "Peoples' SEC Reports") is publicly available. No such SEC Report, at the time filed, furnished or communicated (and, in the case of registration statements and proxy statements, on the dates of effectiveness and the dates of the relevant meetings, respectively), and considering all amendments to any Peoples' SEC Report filed prior to the date hereof, contained any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements made therein, in light of the circumstances in which they were made, not misleading, except that information filed as of a later date (but before the date of this Agreement) shall be deemed to modify information as of an earlier date. As of their respective dates, all Peoples' SEC Reports complied as to form in all material respects with the published rules and regulations of the SEC with respect thereto. No executive officer of Peoples has failed in any respect to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act. As of the date hereof, there are no outstanding comments from or unresolved issues raised by the SEC with respect to any of Peoples' SEC Reports.



(g) Financial Statements; Material Adverse Effect; Internal Controls.

(i) The financial statements of Peoples and its Subsidiaries included (or incorporated by reference) in Peoples' SEC filings (including the related notes, where applicable) (A) have been prepared from, and are in accordance with, the books and records of Peoples and its Subsidiaries, (B) fairly present in all material respects the consolidated results of operations, cash flows, changes in shareholders' equity and consolidated financial position of Peoples and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject in the case of unaudited statements to recurring year-end audit adjustments normal in nature and amount), (C) complied as to form, as of their respective dates of filing with the SEC, in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto, and (D) have been prepared in accordance with generally accepted accounting principles, consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto. As of the date hereof, the books and records of Peoples and its Subsidiaries have been maintained in all material respects in accordance with generally accepted accounting principles and any other applicable legal and accounting requirements and reflect only actual transactions. As of the date hereof, Ernst & Young LLP has not resigned (or informed Peoples that it intends to resign) or been dismissed as independent public accountants of Peoples as a result of or in connection with any disagreements with Peoples on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure.

(ii) Neither Peoples nor any of its Subsidiaries has incurred any material liability or obligation of any nature whatsoever, except for (A) those liabilities that are reflected or reserved against on the consolidated balance sheet of Peoples included in its Annual Report on Form 10-K for the fiscal year ended December 31, 2021 (including any notes thereto), (B) liabilities incurred in the ordinary course of business consistent in nature and amount with past practice since December 31, 2021 or (C) in connection with this Agreement and the transactions contemplated hereby.

(iii) Since December 31, 2021, (A) Peoples and its Subsidiaries have conducted their respective businesses in the ordinary and usual course consistent with past practice, and (B) no event has occurred or circumstance arisen that, individually or taken together with all other facts, circumstances and events is reasonably likely to have a Material Adverse Effect on Peoples.

(iv) Peoples and each of its Subsidiaries maintains a system of "disclosure controls and procedures" (as defined in Rules 13a-15(e) and 15d-15(e) promulgated under the Exchange Act) reasonably designed and maintained to ensure that all information (both financial and non-financial) required to be disclosed by Peoples in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to Peoples' management as appropriate to allow timely decisions regarding required disclosure and to make the certifications of the Chief Executive Officer and Chief Financial Officer of Peoples required under the Exchange Act with respect to such reports. Peoples has

disclosed, based on its most recent evaluation prior to the date of this Agreement, to Peoples' outside auditors and the audit committee of the Peoples Board (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that would be reasonably likely to adversely affect Peoples' ability to accurately record, process, summarize and report financial information, and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in Peoples' internal controls over financial reporting. Since December 31, 2021, neither Peoples, its Subsidiaries nor any director, officer, employee, auditor, accountant or representative of Peoples or its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of Peoples or its Subsidiaries or their respective internal accounting controls, including any material complaint, allegation, assertion or claim that Peoples or its Subsidiaries has engaged in questionable accounting or auditing practices.

(h) Regulatory Matters.

(i) Neither Peoples nor Peoples Bank nor any of their respective properties is a party to or is subject to a Regulatory Order from any Regulatory Authority.

(ii) Neither Peoples nor Peoples Bank has been advised by any Regulatory Authority that such Regulatory Authority is contemplating issuing or requesting (or is considering the appropriateness of issuing or requesting) any such order, decree, formal or informal agreement, memorandum of understanding, commitment letter, board resolution, supervisory letter or similar submission.

(i) Litigation. Except as has not had and would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Peoples, or to delay or prevent Peoples from performing its obligations under this Agreement, no litigation, claim or other proceeding before any court or Governmental Authority is pending against Peoples or Peoples Bank, and, to Peoples' Knowledge, no such litigation, claim or other proceeding has been threatened, and there is no judgment, decree, injunction, rule or order of any Governmental Authority outstanding against Peoples.

(j) Compliance with Laws. Peoples and each of its Subsidiaries (i) are in compliance in all material respects with all applicable federal, state, local and foreign statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable thereto, and (ii) have all licenses, franchises, permits and authorizations which are necessary for the lawful conduct of their respective businesses and ownership of their respective properties, rights and assets under and pursuant to applicable law, except where the failure to hold such license, franchise, permit or authorization or to pay such fees or assessments has not had and would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect on Peoples and, to the Peoples' Knowledge, no suspension or cancellation of any such necessary license, franchise, permit or authorization has, prior to the date hereof, been threatened in writing, and (iii) has not received any notification or communication from any Governmental Authority (A) asserting that Peoples or any of its Subsidiaries are not in compliance with any of the statutes, regulations, or ordinances

which such Governmental Authority enforces, or (B) threatening to revoke any license, franchise, permit, or governmental authorization (nor do any grounds for any of the foregoing exist). Peoples and each of its Subsidiaries have complied in all material respects with, and are not in default or violation in any material respect of, any applicable law relating to Peoples or any of its Subsidiaries.

(k) Bank Secrecy Act, Anti-Money Laundering and OFAC and Customer Information. To Peoples' Knowledge, it and its Subsidiaries are not in any violation in any material respect of the Bank Secrecy Act, the Patriot Act, any order issued with respect to anti-money laundering by the Treasury's Office of Foreign Assets Control, or any other applicable anti-money laundering law, and are in satisfactory compliance in any material respect with the applicable privacy and customer information requirements contained in any federal and state privacy laws, including without limitation, in Title V of the Gramm-Leach-Bliley Act.

(l) CRA Compliance. Peoples Bank currently has a CRA rating of "outstanding" as a result of its most recent CRA examination. Neither Peoples nor any of its Subsidiaries has received notice of non-compliance that would cause the CRA rating of Peoples Bank to fall below "satisfactory."

(m) Fairness Opinion. The Peoples Board has received the written opinion of Raymond James & Associates, Inc., as of the date hereof, as to the fairness from a financial point of view to Peoples of the Merger Consideration to be paid by the Peoples in the Merger.

(n) Brokerage and Finder's Fees. Except for Raymond James & Associates, Inc., Peoples has not engaged or employed any broker, finder, or agent, or agreed to pay or incurred any brokerage fee, finder's fee, commission or other similar form of compensation (including any break-up or termination fee) in connection with this Agreement or the transactions contemplated hereby.

(o) Takeover Laws. Peoples has taken all action required to be taken by Peoples in order to exempt this Agreement, the Support Agreements and the transactions contemplated hereby and thereby from, and this Agreement, the Support Agreements and the transactions contemplated hereby and thereby are exempt from, (i) the requirements of any Takeover Laws, and (ii) any applicable provisions of the Peoples Articles, the Peoples Regulations and/or the governing documents of Peoples Bank.

(p) Tax Treatment of Merger. As of the date of this Agreement, Peoples is not aware of any fact or state of affairs relating to Peoples that could cause the Parent Merger not to be treated as a "reorganization" under Section 368(a) of the Code.

(q) Peoples Information. The information provided in writing by Peoples relating to Peoples and its Subsidiaries that is to be contained in the Registration Statement, the Joint Proxy Statement/Prospectus, any filings or approvals under applicable state securities laws, any filing pursuant to Rule 165 or Rule 425 under the Securities Act or Rule 14a-12 under the Exchange Act, or in any other document filed with any other Governmental Authorities in connection herewith, will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances in which they

are made, not misleading and will comply in all material respects with the provisions of the Securities Act, the Exchange Act, the rules and regulations thereunder, and any other governing laws or regulations, as applicable. No representation or warranty by Peoples, and no statement by Peoples in any certificate, agreement, schedule or other document furnished or to be furnished in connection with the transactions contemplated by this Agreement, was or will be inaccurate, incomplete or incorrect in any material respect as of the date furnished or contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make such representation, warranty or statement not misleading to Limestone.

(r) *Material Adverse Effect*. Peoples has not, on a consolidated basis, suffered a change in its business, financial condition or results of operations since December 31, 2021, that has had or could reasonably be expected to have a Material Adverse Effect on Peoples.

## ARTICLE VI Covenants

6.01 *Reasonable Best Efforts*. Subject to the terms and conditions of this Agreement, each of Limestone and Peoples shall use its reasonable best efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws, so as to permit consummation of the Merger as promptly as practicable and otherwise to enable consummation of the transactions contemplated hereby and shall cooperate fully with the other party hereto to that end.

### 6.02 *Shareholder Approvals*.

(a) Each of Peoples and Limestone shall take all action necessary in accordance with applicable law and their respective organizational documents to duly call, give notice of, convene and, as soon as practicable after the Registration Statement is declared effective, hold a meeting of its shareholders and, except as otherwise provided herein, use its reasonable best efforts to take such other actions necessary to obtain the relevant shareholder approvals, in each case as promptly as practicable for the purpose of obtaining the Requisite Peoples Vote and the Requisite Limestone Vote. Each party shall cooperate and keep the other party informed on a current basis regarding its solicitation efforts and voting results following the dissemination of the Joint Proxy Statement/Prospectus to the shareholders of each party. Each member of the Limestone Board shall have executed and delivered to Peoples a Support Agreement concurrently with the execution of this Agreement.

(b) Except in the case of an Acceptance of Superior Proposal permitted by Section 6.06, Limestone shall solicit, and use its reasonable best efforts to obtain, the Requisite Limestone Vote at the Limestone Meeting. Subject to Section 6.06(d), Limestone shall (i) through the Limestone Board, recommend to its shareholders adoption of this Agreement (the “Limestone Recommendation”), and (ii) include such recommendation in the Joint Proxy Statement/Prospectus. Limestone hereby acknowledges its obligation to submit this Agreement to its shareholders at the Limestone Meeting as provided in this Section 6.02. If requested by Peoples, Limestone will engage a proxy solicitor, reasonably acceptable to Peoples, to assist in the solicitation of proxies from shareholders relating to the Requisite Limestone Vote.



(c) Peoples shall solicit, and use its reasonable best efforts to obtain, the Requisite Peoples Vote at the Peoples Meeting. Peoples shall (i) through the Peoples Board, recommend to its shareholders adoption of this Agreement and the transactions contemplated herein by the shareholders of Peoples and any other matters required to be approved by Peoples' shareholders for consummation of the Merger and the transactions contemplated herein, as required by this Section 6.01(c) (the "Peoples Recommendation"), and (ii) include such recommendation in the Joint Proxy Statement/Prospectus. The Peoples Board shall at all times prior to and during the Peoples Meeting recommend the approval and adoption of this Agreement and the transactions contemplated herein by the shareholders of Peoples and any other matters required to be approved by Peoples' shareholders for consummation of the Merger and the transactions contemplated herein and shall not withhold, withdraw, amend, modify, change or qualify such recommendation in a manner adverse in any respect to the interests of Limestone or take any other action or make any other public statement inconsistent with such recommendation.

**6.03 *Registration Statement; Joint Proxy Statement/Prospectus.***

(a) Upon the execution and delivery of this Agreement, Peoples and Limestone shall promptly cause the Registration Statement to be prepared and Peoples shall cause the Registration Statement to be filed with the SEC. Peoples and Limestone shall use their commercially reasonable best efforts to have the Registration Statement declared effective by the SEC as soon as practicable after the filing thereof. The parties shall cooperate in responding to and considering any questions or comments from the SEC staff regarding the information contained in the Registration Statement. If, at any time after the Registration Statement is filed with the SEC, and prior to the Effective Time, any event relating to Limestone or Peoples is discovered by Limestone or Peoples, as applicable, which should be set forth in an amendment of, or a supplement to, the Registration Statement, the discovering party shall promptly inform the other party with all relevant information relating to such event, whereupon Peoples shall promptly cause an appropriate amendment to the Registration Statement to be filed with the SEC. Upon the effectiveness of such amendment, each of Limestone and Peoples (if prior to the meetings of the shareholders pursuant to Section 6.02 hereof) will take all necessary action as promptly as practicable to permit an appropriate amendment or supplement to be transmitted to the shareholders entitled to vote at such meetings. Peoples shall also use reasonable best efforts to obtain all necessary state securities law or "blue sky" permits and approvals required to carry out the transactions contemplated by this Agreement, and Limestone shall furnish all information concerning Limestone and the holders of Limestone Common Stock as may be reasonably requested in connection with any such action. Limestone and Peoples shall each furnish the other with all information concerning each other and its directors, officers and shareholders and such other matters as may be reasonably necessary or advisable in connection with the Registration Statement.

(b) Peoples and Limestone each agrees to use its commercially reasonable efforts and to cooperate with the other party in all reasonable respects to prepare the Joint Proxy Statement/Prospectus for filing with the SEC and, when the Registration Statement is effective, for delivery to their respective shareholders.

(c) If either party becomes aware prior to the Effective Time of any information that would cause any of the statements in the Joint Proxy Statement/Prospectus to be false or

misleading with respect to any material fact, or to omit to state any material fact necessary to make the statements therein not false or misleading, that party shall promptly inform the other thereof and take the necessary steps to correct the Joint Proxy Statement/Prospectus.

6.04 ***Public Announcements.*** Neither Limestone nor Peoples shall, and neither Limestone nor Peoples shall permit any of their respective Subsidiaries to, issue or cause the publication of any press release or other public announcement with respect to, or otherwise make any public statement, or, except as otherwise specifically provided in this Agreement, any disclosure of nonpublic information to a third party, concerning, the transactions contemplated by this Agreement without the prior consent (which shall not be unreasonably withheld, conditioned or delayed) of Peoples, in the case of a proposed announcement, statement or disclosure by Limestone, or Limestone, in the case of a proposed announcement, statement or disclosure by Peoples; provided that either Peoples or Limestone may, without the prior consent of the other party (but after prior consultation with the other party to the extent practicable under the circumstances) issue or cause the publication of any press release or other public announcement to the extent required by applicable law or by the rules of the SEC.

6.05 ***Access; Information.***

(a) Upon reasonable notice and subject to applicable laws relating to the exchange of information, Limestone shall, and shall cause each of its Subsidiaries to, afford Representatives of Peoples, reasonable access, during normal business hours during the period prior to the Effective Time, to all its properties, books, contracts, commitments and records, and, during such period, Limestone shall, and shall cause its Subsidiaries to, make available to Peoples (i) a copy of each report, schedule, registration statement and other documents filed or received by it during such period pursuant to the requirements of federal securities laws or federal or state banking or insurance laws, and (ii) all other information concerning its business, properties and personnel as Peoples may reasonably request, including periodic updates of the information provided in Section 5.01(hh). Limestone shall invite one Representative of Peoples selected by Peoples from time to time to attend, solely as an observer, all meetings of the Limestone Board (and committees thereof) and Limestone Bank board (including Limestone Bank's loan committee) after the date of this Agreement; provided, however, that in no event shall such Peoples Representative be invited to or permitted to attend any executive session of Limestone's Board, Limestone Bank's board or any meeting at which Limestone reasonably determines that such attendance is inconsistent with the fiduciary obligations or confidentiality requirements of the Limestone Board or Limestone Bank board, as applicable. Upon the reasonable request of Limestone, Peoples shall furnish such reasonable information about it and its business as is relevant to Limestone and its shareholders in connection with the transactions contemplated by this Agreement. Neither Limestone nor Peoples, nor any of their Subsidiaries shall be required to provide access to or to disclose information where such access or disclosure would jeopardize the attorney-client privilege of such party or its Subsidiaries or contravene any law, judgment, decree, fiduciary duty or binding agreement entered into prior to the date of this Agreement. The parties shall make appropriate substitute disclosure arrangements under circumstances in which the restrictions of the preceding sentence apply.

(b) Neither Limestone nor Peoples will, nor shall either party's Representatives, use any information obtained pursuant to this Section 6.05 (as well as any other

information obtained prior to the date hereof in connection with the entering into of this Agreement) for any purpose unrelated to the consummation of the transactions contemplated by this Agreement, and such information will be subject to the confidentiality provisions of Section 6.16.

(c) In the event that this Agreement is terminated or the transactions contemplated by this Agreement shall otherwise fail to be consummated, each party shall promptly upon request cause all copies of documents or extracts thereof containing information and data as to another party hereto to be returned to the party which furnished the same. No investigation by either party of the business and affairs of the other shall affect or be deemed to modify or waive any representation, warranty, covenant or agreement in this Agreement, or the conditions to either party's obligation to consummate the transactions contemplated by this Agreement.

(d) During the period from the date of this Agreement to the Effective Time, as soon as reasonably practicable after they become available, but in no event more than 30 days after the end of each calendar month ending after the date hereof, Limestone will furnish to Peoples (i) consolidated financial statements (including balance sheets, statements of operations and stockholders' equity) of Limestone or any of its Subsidiaries (to the extent available) as of and for such month then ended, (ii) internal management reports showing actual financial performance against plan and previous period, and (iii) to the extent permitted by applicable law, any reports provided to the Limestone Board or any committee thereof relating to the financial performance and risk management of Limestone or any of its Subsidiaries.

#### 6.06 *Acquisition Proposal.*

(a) From the date of this Agreement through the first to occur of the Effective Time or the termination of this Agreement, except as provided in Section 6.06(b), Limestone shall not, and shall cause any of its Subsidiaries and the officers, directors, employees, advisors and other agents of Limestone and its Subsidiaries not to, directly or indirectly (i) solicit, initiate, encourage, facilitate (including by way of providing information) or induce any inquiry, proposal or offer with respect to, or the making or completion of, any Acquisition Proposal, or any inquiry, proposal or offer that is reasonably likely to lead to any Acquisition Proposal, (ii) enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any Person or Group any confidential or nonpublic information with respect to or in connection with, an Acquisition Proposal, (iii) take any other action to facilitate any inquiries or the making of any proposal that constitutes or may reasonably be expected to lead to an Acquisition Proposal, (iv) approve, endorse or recommend, or propose to approve, endorse or recommend any Acquisition Proposal or any agreement related thereto, (v) enter into any agreement contemplating or otherwise relating to any Acquisition Transaction or Acquisition Proposal, (vi) enter into any agreement or agreement in principle requiring, directly or indirectly, Limestone to abandon, terminate or fail to consummate the transactions contemplated hereby or breach its obligations hereunder, or (vii) propose or agree to do any of the foregoing.

(b) Notwithstanding anything to the contrary in Section 6.06(a), if Limestone or any of its Representatives receives an unsolicited bona fide Acquisition Proposal that did not result from or arise in connection with a breach of Section 6.06(a), Limestone and its Representatives may take any action described in Section 6.06(a)(ii), if, and only if, the Limestone Board determines in good faith, after consultation with Limestone's outside legal and financial

advisors, that (i) such Acquisition Proposal constitutes or is reasonably capable of becoming a Superior Proposal, (ii) the failure of the Limestone Board to take such action would cause the Limestone Board to violate its fiduciary duties to the shareholders of Limestone under applicable Law; provided, that Limestone receives from such Person or Group an executed confidentiality agreement containing terms no less favorable to the disclosing party than the confidentiality terms of this Agreement.

(c) As promptly as practicable (but in no event more than 48 hours) following receipt of any Acquisition Proposal or any request for nonpublic information or inquiry that would reasonably be expected to lead to any Acquisition Proposal, Limestone shall (i) advise Peoples in writing of the receipt of any Acquisition Proposal, request or inquiry and the terms and conditions of such Acquisition Proposal, request or inquiry, (ii) shall promptly provide to Peoples a written summary of the material terms of such Acquisition Proposal, request or inquiry including the identity of the Person or Group making the Acquisition Proposal, and (iii) shall keep Peoples promptly apprised of the status of any related developments, discussions and negotiations (including providing Peoples with a copy of all material documentation and correspondence relating thereto) on a current basis. Limestone agrees that it shall simultaneously provide to Peoples any information concerning Limestone that may be provided (pursuant to Section 6.06(b)) to any other Person or Group in connection with any Acquisition Proposal which has not previously been provided to Peoples.

(d) Notwithstanding anything herein to the contrary, at any time prior to the Limestone Meeting, Limestone may accept or approve a Superior Proposal thereby withdrawing its recommendation of the Agreement (“Acceptance of Superior Proposal”), if and only if (x) from and after the date hereof, Limestone has complied with Sections 6.02 and 6.06, and (y) the Limestone Board has determined in good faith, after consultation with outside legal counsel, that the failure to take such action would cause it to violate its fiduciary duties under applicable law; provided, that the Limestone Board may not effect a Acceptance of Superior Proposal unless:

(i) Limestone shall have received an unsolicited bona fide written Acquisition Proposal and the Limestone Board shall have concluded in good faith (after consultation with Limestone’s financial advisors and outside legal counsel) that such Acquisition Proposal is a Superior Proposal, after taking into account any amendment or modification to this Agreement agreed to or proposed by Peoples;

(ii) Limestone shall have provided prior written notice to Peoples at least five business days in advance (the “Notice Period”) of taking such action, which notice shall advise Peoples that the Limestone Board has received a Superior Proposal, specifying the material terms and conditions of such Superior Proposal (including the identity of the Person or Group making the Superior Proposal);

(iii) during the Notice Period, Limestone shall, and shall cause its financial advisors and outside counsel to, negotiate with Peoples in good faith (to the extent Peoples desires to so negotiate) to make such adjustments to the terms and conditions of this Agreement so that such Superior Proposal ceases to constitute a Superior Proposal; and



(iv) the Limestone Board shall have concluded in good faith (after consultation with Limestone's financial advisors and outside legal counsel) that, after considering the results of such negotiations and giving effect to any proposals, amendments or modifications offered or agreed to by Peoples, if any, that such Acquisition Proposal continues to constitute a Superior Proposal.

If during the Notice Period any revisions are made to the Superior Proposal, Limestone shall deliver a new written notice to Peoples giving rise to a new five business day Notice Period and shall again comply with the requirements of this Section 6.06(d) with respect to such new written notice.

(e) Nothing contained in this Agreement shall prevent Limestone from complying with Rule 14d-9 and Rule 14e-2 under the Exchange; provided, however, that any such disclosure relating to an Acquisition Proposal shall be deemed a change in Limestone Recommendation unless Limestone Board reaffirms Limestone Recommendation in such disclosure.

(f) As used in this Agreement:

(i) "Superior Proposal" means any bona fide written Acquisition Proposal on terms which the Limestone Board determines in good faith, after consultation with Limestone's outside legal counsel and independent financial advisors, and taking into account all the legal, financial, regulatory and other aspects of such Acquisition Proposal, including as to certainty and timing of consummation, would, if consummated, result in a transaction that is more favorable to the holders of Limestone Common Stock from a financial point of view than the terms of this Agreement (in each case, taking into account any revisions to this Agreement made or proposed by Peoples); provided that for purposes of the definition of "Superior Proposal," the references to "20% or more" in the definition of Acquisition Proposal or Acquisition Transaction shall be deemed to be references to "50% or more."

(ii) "Acquisition Proposal" means any proposal, offer, inquiry, or indication of interest (whether binding or non-binding, and whether communicated to Limestone or publicly announced to Limestone's shareholders) by any Person or Group (in each case other than Peoples or any of its Affiliates) relating to an Acquisition Transaction involving Limestone or any of its present or future consolidated Subsidiaries, or any combination of such Subsidiaries, the purchase assets of which constitute 20% or more of the consolidated assets of Limestone as reflected on Limestone's consolidated statement of condition prepared in accordance with GAAP.

(iii) "Acquisition Transaction" means any transaction or series of related transactions (other than the transactions contemplated by this Agreement) involving (A) any acquisition (whether direct or indirect, including by way of merger, share exchange, consolidation, business combination or other similar transaction) or purchase from Limestone by any Person or "group" (as such term is

defined in Section 13(d) under the Exchange Act), other than Peoples or any of its Affiliates, of 20% or more in interest of the total outstanding voting securities of Limestone or any of its Subsidiaries (measured by voting power), or any tender offer or exchange offer that if consummated would result in any Person or Group, other than Peoples or any of its Affiliates, beneficially owning 20% or more in interest of the total outstanding voting securities of Limestone or any of its Subsidiaries (measured by voting power), or any merger, consolidation, share exchange, business combination or similar transaction involving Limestone pursuant to which the shareholders of Limestone immediately preceding such transaction would hold less than 50% of the equity interests in the surviving or resulting entity of such transaction (or, if applicable, the ultimate parent thereof) (measured by voting power), (B) any sale or lease or exchange, transfer, license, acquisition or disposition of a business, deposits or assets that constitute 20% or more of the consolidated assets, business, revenues, net income, assets or deposits of Limestone, or (C) any liquidation or dissolution of Limestone or any of its Subsidiaries.

**6.07 Takeover Laws.** No party hereto shall take any action that would cause the transactions contemplated by this Agreement or the Support Agreements to be subject to requirements imposed by the Takeover Law and each of them shall take all necessary steps within its control to exempt (or ensure the continued exemption of) this Agreement, the Support Agreements and the transactions contemplated by this Agreement from or, if necessary, challenge the validity or applicability of, the Takeover Law, as now or hereafter in effect.

**6.08 Certain Policies.** Before the Effective Time, Limestone shall, upon the request of Peoples, (i) modify and change its loan, investment portfolio, asset liability management and real estate valuation policies and practices (including, but not limited to, loan classifications and levels of reserves) so that such policies and practices may be applied on a basis that is consistent with those of Peoples, and (ii) evaluate the need for any reserves including, but not limited to, reserves relating to any outstanding litigation, any Tax audits or any liabilities to be incurred upon cancellation of any contracts as a result of the Merger; provided, however, that Limestone shall not be obligated to take any such action pursuant to this Section 6.08 unless and until Peoples acknowledges that all conditions to its obligation to consummate the Merger have been satisfied (including, but not limited to, the receipt of the regulatory approvals required by Section 7.01(b)) and certifies to Limestone that Peoples' representations and warranties, subject to Section 5.02, are true and correct as of such date and that Peoples is otherwise in material compliance with this Agreement; provided further, however, that Limestone shall not be obligated to take any such action pursuant to this Section 6.08 if such action would be clearly inconsistent with GAAP or applicable law. Limestone's representations, warranties and covenants contained in this Agreement shall not be deemed to be untrue or breached in any respect for any purpose as a consequence of any modifications or changes undertaken solely on account of this Section 6.08.

**6.09 Regulatory Applications.**

(a) Peoples and Limestone and their respective Subsidiaries shall cooperate and use their respective reasonable best efforts to allow Peoples to prepare, submit and file all applications and requests for regulatory approval, to timely effect all filings and to obtain all

consents, approvals and/or authorizations of all the Regulatory Authorities necessary to consummate the transactions contemplated by this Agreement. In exercising the rights under this Section 6.09, each of the parties hereto agrees to act reasonably and as promptly as practicable, and Peoples agrees to file, and to cause Peoples Bank to file, all regulatory applications required to be filed by them with the FRB in connection with the Merger within thirty (30) days from the date hereof. Peoples agrees that it will consult with Limestone with respect to the obtaining of all material consents, approvals and authorizations from the Regulatory Authorities necessary to consummate the transactions contemplated by this Agreement and to keep Limestone apprised of the status of material matters relating to obtainment of such consents, approvals and/or authorizations from the Regulatory Authorities. Limestone shall have the right to review in advance, subject to applicable laws relating to the exchange of information, all material written information submitted to the Regulatory Authorities in connection with the transactions contemplated by this Agreement. Notwithstanding the forgoing sentence, Limestone shall not have any right to review and/or inspect any competitively sensitive business or other proprietary information submitted by Peoples to any Regulatory Authority, including, but not limited to any business plan and/or financial data or analysis prepared by Peoples in relation to such consents, approvals and/or authorizations from the Regulatory Authorities.

(b) Limestone agrees, upon request, to furnish Peoples with all information concerning itself, Limestone Bank and its other direct and indirect Subsidiaries, and their directors, officers and shareholders and such other matters as may be reasonably necessary, advisable and/or required in connection with any filing, notice or application made by or on behalf of Peoples or any of its Subsidiaries to any Regulatory Authority.

#### **6.10 *Employment Matters; Employee Benefits.***

(a) It is understood and agreed that nothing in this Section 6.10 or elsewhere in this Agreement shall be deemed to be a contract of employment or be construed to give Limestone's or any of its Subsidiaries' employees any rights other than as employees at will under applicable law, and Limestone's and its Subsidiaries' employees shall not be deemed to be third-party beneficiaries of this Agreement. Employees of Limestone or any of its Subsidiaries who become employees of Peoples as a result of the Merger shall participate in either Limestone's Compensation and Benefit Plans (for so long as Peoples determines necessary or appropriate) or in the employee benefit plans sponsored by Peoples for Peoples' employees (with credit for their years of service with Limestone or its Subsidiaries for participation and vesting purposes under Peoples' applicable plans, including credit for years of service and for seniority under vacation and sick pay plans and programs, but subject to the eligibility and other terms of such plans. In addition, to the extent Limestone's employees participate in Peoples' group health plan (instead of continued participation in Limestone's group health plan), Peoples agrees (i) to waive all restrictions and limitations for pre-existing conditions under Peoples' group health plan and applicable insurance policy and (ii) any eligible expenses incurred by such Limestone employees and his or her covered dependents shall be taken into account under Peoples' group health plan to the extent such eligible expenses were incurred during the plan year of Peoples' group health plan in which the Closing Date occurs for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable.

(b) Subject to any applicable regulatory restrictions, Peoples shall pay to each employee of Limestone or its Subsidiaries who (i) is not subject to an existing contract providing for severance and/or a change in control payment, (ii) is an employee of Limestone or any of its Subsidiaries immediately before the Effective Time, (iii) has been an employee of Limestone or any of its Subsidiaries for at least six months prior to the Effective Time, (iv) is not offered continued employment by Peoples or any of its Subsidiaries after the Effective Time, and (v) who signs and delivers Peoples' standard form of termination and release agreement, a severance amount equal to two weeks of pay, at their base rate of pay in effect at the time of termination, multiplied by the number of whole years of service of such employee with Limestone or any of its Subsidiaries, less applicable local, state and federal tax withholding; provided, however, that the minimum severance payment shall equal four weeks of base pay, and the maximum severance payment shall not exceed 26 weeks of base pay. Such severance pay shall be paid in a lump sum within 14 days following the employee's termination, provided that such employee has not been terminated for cause. For any employee of Limestone or its Subsidiaries participating in Limestone's group health program at the Effective Time who is entitled to a severance payment, the employee will be able to purchase health insurance coverage at the full premium rate for the entire COBRA period.

(c) Prior to the Effective Date, but after the receipt of the last to be obtained of either the Requisite Limestone Vote, the Requisite Peoples Vote and the regulatory approvals required by Section 7.01(b) of this Agreement, the Limestone Board shall adopt a resolution approving the termination of its and/or the applicable Subsidiaries' 401(k) Plan(s) (the "Limestone 401(k) Plan") effective as of a date immediately preceding the Effective Date. In addition, the Limestone Board shall approve the adoption of any amendments to the Limestone 401(k) Plan sufficient to terminate the Limestone 401(k) Plan immediately preceding the Effective Date. Following the Effective Date, Peoples, as the successor in interest to Limestone, shall begin the process of requesting from the IRS a determination that the termination of the Limestone 401(k) Plan is in compliance with Section 401(a) of the Code (the "Determination Letter") and distributing benefits under the Limestone 401(k) Plan to plan participants. Peoples agrees to take all commercially reasonable steps necessary or appropriate to accept roll-overs of benefits from the Limestone 401(k) Plan to the Peoples 401(k) plan for employees of Limestone and its Subsidiaries who continue as employees of Peoples and its Subsidiaries after the Effective Time, subject to the provisions of the Peoples 401(k) Plan.

(d) For current 2023 fiscal year, each employee of Limestone and its Subsidiaries that continues with Peoples, or any of its Subsidiaries, will at the Effective Time be entitled to the greater of (A) the accrued and unused paid-time-off (i.e. the amounts accumulated from vacation, occasional non-work illness, appointments, personal emergencies, etc.) such employee has as of the Effective Time, or (B) the accrued and unused paid-time-off such employee would have for the same period had such employee been under Peoples' policies and procedures.

(e) Prior to the Effective Time, Limestone may make certain retention or stay bonus payments to certain employees of Limestone and its Affiliates pursuant to retention or stay bonus agreement, the form of which shall be acceptable to Peoples; provided, however, that (i) total aggregate amount of payments made pursuant to this Section shall not exceed \$700,000 and (ii) Peoples has reviewed and approved the applicable allocation of amounts and list of recipients of such amounts.



(f) On and after the date hereof, any broad-based employee notices or communication materials (including any website posting) to be provided or communicated by Limestone with respect to employment, compensation or benefits matters addressed in this Agreement or related, directly or indirectly, to the transactions contemplated by this Agreement shall be subject to the prior prompt review and comment of Peoples, and Limestone shall consider in good faith revising such notice or communication to reflect any comments or advice that Peoples timely provides.

(g) Nothing in this Agreement shall confer upon any employee, director or consultant of Limestone or any of the Limestone Subsidiaries or affiliates any right to continue in the employ or service of Peoples, or any Peoples Subsidiary or affiliate thereof, or shall interfere with or restrict in any way the rights of Limestone, Peoples or any Subsidiary or Affiliate thereof to discharge or terminate the services of any employee, director or consultant of Limestone or any of the Limestone Subsidiaries or Affiliates at any time for any reason whatsoever, with or without cause (subject to the provisions of Article IV of this Agreement). Without limiting the generality of Section 9.11, subject to Section 6.18, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person, including, without limitation, any current or former employee, director or consultant of Limestone or any of the Limestone Subsidiaries or affiliates, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

#### 6.11 *Notification of Certain Matters; Disclosure Supplements.*

(a) Peoples and Limestone (for purposes of this Section 6.11, the “Notifying Party”) shall each promptly advise the other party of any change or event (i) that has had or is reasonably likely to have a Material Adverse Effect on the Notifying Party or (ii) which the Notifying Party believes would or would be reasonably likely to cause or constitute a material breach of any of the Notifying Party’s representations, warranties or covenants contained herein that reasonably could be expected to give rise, either individually or in the aggregate, to the failure of a condition set forth in Article VII; provided that any failure to give notice in accordance with the foregoing with respect to any breach shall not be deemed to constitute a violation of this Section 6.11 or the failure of any condition set forth in Article VII to be satisfied, or otherwise constitute a breach of this Agreement by the party failing to give such notice, in each case unless the underlying breach would independently result in a failure of the conditions set forth in Article VII to be satisfied.

(b) Peoples and Limestone shall each promptly supplement, amend and update, upon the occurrence of any change prior to the Effective Time, and as of the Effective Time, the Peoples Disclosure Schedule and the Limestone Disclosure Schedule (as applicable) with respect to any matters or events hereafter arising which, if in existence or having occurred as of the date of this Agreement, would have been required to be set forth or described in the Peoples Disclosure Schedule or the Limestone Disclosure Schedule (as applicable) or this Agreement and including, without limitation, any fact which, if existing or known as of the date hereof, would have made any of the representations or warranties of Peoples or Limestone (as applicable) contained herein materially incorrect, untrue or misleading. No supplement, amendment or update to the Peoples Disclosure Schedule or Limestone Disclosure Schedule (as applicable) shall (i) cure any breach of a representation or warranty existing as of the date of this Agreement or any breach of a covenant

in this Agreement after the execution of this Agreement; or (ii) affect a party's rights with respect to termination under Article VIII of this Agreement.

6.12 **Data Conversion.** From and after the date hereof, the parties shall use their commercially reasonable efforts to facilitate data sharing and the integration of Limestone with the business of Peoples following consummation of the transactions contemplated hereby, and shall meet on a regular basis to discuss and plan for the conversion of the data processing and related electronic information technology system (the "Data Conversion") to those used by Peoples. Limestone agrees to use all commercially reasonable efforts to promptly commence and aid Peoples preparations for implementation of the Data Conversion, with the goal of effecting the Data Conversion before the end of 2023. The parties agree to cooperate in preparing for the Data Conversion, including by providing reasonable access to data, information systems, and personnel having expertise with their and their respective Subsidiaries' information and data systems.

6.13 **Consents.** Limestone and Peoples each shall use its reasonable best efforts to obtain any required consents to the transactions contemplated by this Agreement.

6.14 **Insurance Coverage.** Limestone shall cause the policies of insurance listed in the Limestone Disclosure Schedule (or policies of insurance providing comparable coverage) to remain in effect until the Effective Time.

6.15 **Dividends.** In the calendar quarter in which the Closing occurs, each of Peoples and Limestone shall coordinate with the other the declaration of any dividends in respect of Peoples Common Shares and Limestone Common Stock and the record dates and payment dates relating thereto, it being the intention of the parties hereto that holders of Limestone Common Stock shall not receive two dividends, or fail to receive one dividend, in any quarter with respect to their shares of Limestone Common Stock and any shares of Peoples Common Shares any such holder receives in exchange therefor in the Parent Merger.

6.16 **Confidentiality.** Except for the use of information in connection with the Joint Proxy Statement/Prospectus described in Section 6.03 hereof and any other governmental filings required in order to complete the transactions contemplated by this Agreement, all information (collectively, the "Information") received by each of Limestone and Peoples pursuant to the terms of this Agreement shall be kept in strictest confidence and not used for any purpose other than a mutually acceptable transaction contemplated hereby; provided that, subsequent to the mailing of the Joint Proxy Statement/Prospectus to the shareholders of each party, this Section 6.16 shall not apply to Information included in the Joint Proxy Statement/Prospectus to be sent to the shareholders of each party under Section 6.03. Limestone and Peoples agree that the Information will be used only for the purpose of completing the transactions contemplated by this Agreement. Limestone and Peoples agree to hold the Information in strictest confidence and shall not use such Information for any purpose other than a mutually acceptable transaction contemplated hereby, and shall not disclose directly or indirectly any of such Information except when, after and to the extent such Information (i) is or becomes generally available to the public other than through the failure of Limestone or Peoples to fulfill its obligations hereunder, (ii) is demonstrated as already known to the party receiving the Information on a nonconfidential basis prior to the disclosure, or (iii) is subsequently disclosed to the party receiving the Information on a nonconfidential basis by a third party having no obligation of confidentiality to the party disclosing the Information; provided nothing herein shall prohibit a

party from making any disclosure required by law. In the event the transactions contemplated by this Agreement are not consummated, Limestone and Peoples agree to return upon request all copies of the Information (including all copies, summaries, memorandum thereof) provided to the other promptly and destroy all electronic copies of such Information.

6.17 ***Regulatory Matters.*** Peoples, Limestone and each of their Subsidiaries shall cooperate and each of them agrees to use its reasonable best efforts to remediate any order, decree, formal or informal agreement, memorandum of understanding or similar agreement by Limestone or any Subsidiary with, or a commitment letter, board resolution or similar submission by Limestone or any Subsidiary to, or supervisory letter from any Regulatory Authority to Limestone or Subsidiary, to the satisfaction of such Regulatory Authority.

6.18 ***Indemnification.***

(a) For a period of six years after the Effective Time, Peoples shall indemnify each Person who served as a director or officer of Limestone or its Subsidiaries on or after the date of this Agreement and before the Effective Time, to the fullest extent provided by the Limestone Articles and the Limestone Bylaws and the organizational documents of Limestone's Subsidiaries as of the date hereof, from and against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with any threatened, pending or completed action, suit or proceeding by reason of the fact that such Person was a director or officer of Limestone or any of its Subsidiaries or serving as a director or officer of another Person; provided, however, that any such indemnification shall not be prohibited by applicable state and federal laws. The indemnification obligation hereunder shall include the obligation to advance expenses in accordance with the Limestone Articles and the Limestone Bylaws and the organizational documents of Limestone's Subsidiaries as in effect on the date hereof.

(b) Before the Effective Date, Limestone shall procure, at the expense of Peoples, a policy of officers' and directors' and company liability insurance with respect to actions, omissions, events, matters or circumstances occurring prior to the Effective Time as currently maintained by Limestone ("Tail Policy") to be effective for a period of six years following the Effective Time, on terms no less advantageous than those contained in Limestone's existing directors' and officers' and company's liability insurance policy; provided, however, that the premium on the Tail Policy shall not exceed 200% of Limestone's then premium levels.

(c) The provisions of the Section 6.18 shall survive the Effective Time and are intended to be for the benefit of, and shall be enforceable by, each person entitled to indemnification hereunder and his or her heirs and representatives. If Peoples, or any of its successors or assigns, consolidates with or merges into any other entity and is not the continuing or surviving entity of such consolidation or merger, transfers all or substantially all its assets or deposits to any other entity or engages in any similar transaction, then in each case, proper provision shall be made so the successors and assigns of Peoples assume the obligations set forth in this Section 6.18.

6.19 ***Environmental Assessments.*** Limestone hereby agrees to permit Peoples to engage, at the expense of Peoples, a qualified consultant, mutually agreeable to Limestone and Peoples, to conduct a Phase I Environmental Site Assessment in accordance with the requirements of ASTM E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Practice ("Phase I") of each parcel of real estate owned by

Limestone or any Subsidiary, including real estate acquired by Limestone Bank upon foreclosure. Peoples agrees to indemnify and hold Limestone and its Subsidiaries harmless from any damage that may result from the conduct of such assessments.

**6.20 *Exemption From Section 16(b) Liability.*** Limestone and Peoples agree that, in order to most effectively compensate and retain those officers and directors of Limestone subject to the reporting requirements of Section 16(a) of the Exchange Act (the “Limestone Insiders”), both before and after the Effective Time, it is desirable that Limestone Insiders not be subject to a risk of liability under Section 16(b) of the Exchange Act to the fullest extent permitted by applicable law in connection with the conversion of shares of Limestone Common Stock in the Merger, and for that compensatory and retentive purpose agree to the provisions of this Section 6.20. Limestone shall deliver to Peoples in a reasonably timely fashion before the Effective Time accurate information regarding the Limestone Insiders, and the Boards of Directors of Peoples and of Limestone, or a committee of non-employee directors thereof (as such term is defined for purposes of Rule 16b-3(d) under the Exchange Act), shall before the Effective Time take all steps as may be necessary or appropriate to cause (a) in the case of Limestone, any dispositions of Limestone Common Stock by Limestone Insiders and (b) in the case of Peoples, any acquisitions of Peoples Common Shares by any Limestone Insiders who, immediately following the Merger, will be officers or directors of Peoples subject to the reporting requirements of Section 16(a) of the Exchange Act, in each case pursuant to the transactions contemplated by this Agreement, to be exempt from liability pursuant to Rule 16b-3 under the Exchange Act to the fullest extent permitted by applicable law.

**6.22 *Litigation and Claims.*** Each of Peoples and Limestone shall, to the extent permitted under applicable law and regulation, promptly notify the other party in writing of any action, arbitration, audit, hearing, investigation, litigation, suit, subpoena or summons issued, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator pending or, to the knowledge of Peoples or Limestone, as applicable, threatened against Peoples, Limestone or any of their respective Subsidiaries that (a) questions or would reasonably be expected to question the validity of this Agreement, the Subsidiary Bank Merger Agreement or the other agreements contemplated hereby or thereby or any actions taken or to be taken by against Peoples, Limestone or their respective Subsidiaries with respect hereto or thereto, or (b) seeks to enjoin or otherwise restrain the transactions contemplated hereby or thereby. Limestone shall give Peoples the opportunity to participate at its own expense in the defense or settlement of any shareholder litigation against Limestone and/or its directors or Affiliates relating to the transactions contemplated by this Agreement, and no such settlement shall be agreed without Limestone’s prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

**6.23 *NASDAQ Listing.*** Peoples shall cause the Peoples Common Shares to be issued in the Merger to be approved for listing on the NASDAQ – Global Select Market® as of the Effective Time.

**6.24 *Other Subsidiaries and Investments.***

(a) Prior to the Effective Date, Limestone and/or Limestone Bank, as applicable, shall facilitate the dissolution of: (i) PBIB Corporation, Inc., a Kentucky Corporation (the “PBIB”



Corporation”), (ii) PBI Title Services, LLC, a Kentucky limited liability company (“PBI Title”), (iii) IBP 1, LLC, a Kentucky limited liability company (“IBP 1”) and (iv) IBP 2, LLC, a Kentucky limited liability company (“IBP 2”). The dissolutions contemplated by this Section 6.24(a) is referred to herein as the “Other Subsidiaries Dissolutions”. Limestone shall, and shall cause its Subsidiaries to, take, or cause to be taken, all such actions necessary to ensure that the Other Subsidiaries Dissolutions comply with all applicable laws, and Limestone will keep Peoples apprised of the status of matters relating to the Other Subsidiaries Dissolutions. The form of any and all documentation relating to the Other Subsidiaries Dissolutions shall be subject to the prior review of Peoples.

(b) Limestone Bank owns 13 Class B ownership interests in Kentucky Title Center, LLC, a Kentucky limited liability company and title insurance and professional services firm for residential and commercial transactions (“Kentucky Title Center”). On or before the Effective Date, and in all cases subject to applicable law, Limestone shall cause Limestone Bank to take, or cause to be taken, all such actions necessary to ensure the sale, transfer and divestiture of its interest in Kentucky Title Center either to other member(s) of Kentucky Title Center or to Kentucky Title Center (“KTC Divestiture”). Limestone agree it shall consult with Peoples with respect to negotiating the KTC Divestiture and the obtaining of all permits, consents, approvals and authorizations of all third parties necessary or advisable to consummate the KTC Divestiture, and Limestone will keep Peoples apprised of the status of matters relating to the KTC Divestiture. The form of any and all agreements, certificates and other documentation relating to the KTC Divestiture shall be subject to the prior review of Peoples.

**6.25 Board Seat.** At or promptly following the Effective Time, Peoples shall increase by one (1) the number of directors constituting the Peoples Board and appoint Limestone’s Chairman, W. Glenn Hogan, to the Peoples Board, subject to Peoples standard corporate governance practices and standard director evaluation process. Peoples shall, subject to its standard corporate governance practices, nominate and recommend such appointee for election at the next applicable annual meeting of the shareholders of Peoples to serve for a one-year term.

**6.26 Absence of Control.** It is the intent of the parties to this Agreement that Peoples, by reason of this Agreement, shall not be deemed (until consummation of the transactions contemplated herein) to control, directly or indirectly, Limestone or any of its Subsidiaries and shall not exercise or be deemed to exercise, directly or indirectly, a controlling influence over the management or policies of Limestone or any of its Subsidiaries. Prior to the Effective Time, Limestone shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries’ respective operations.

**6.27 Tax Treatment.** No party hereto shall take any action inconsistent with the treatment of the Merger as a “reorganization” within the meaning of Section 368(a) of the Code. Each of Peoples and Limestone agrees to take such action as may be reasonably required, if such action may be reasonably taken, to reverse the impact of past actions which would adversely impact the ability of the Merger to be characterized as a tax free reorganization under Section 368(a) of the Code.

## ARTICLE VII

### Conditions to Consummation of the Merger; Closing

7.01 ***Conditions to Each Party's Obligation to Effect the Merger.*** The respective obligation of each of Peoples and Limestone to consummate the Merger is subject to the fulfillment or written waiver by Peoples and Limestone prior to the Effective Time of each of the following conditions:

(a) ***Shareholder Approval.*** This Agreement and the Merger shall have been duly adopted and approved by the requisite vote of the shareholders of Limestone and Peoples.

(b) ***Regulatory Approvals.*** All regulatory approvals required to consummate the transactions contemplated hereby shall have been obtained and shall remain in full force and effect and all statutory waiting periods in respect thereof shall have expired and no such approvals shall contain (i) any conditions, restrictions or requirements which the Peoples Board reasonably determines would either before or after the Effective Time have a Material Adverse Effect on Peoples and its Subsidiaries taken as a whole after giving effect to the consummation of the Merger, or (ii) any conditions, restrictions or requirements that are not customary and usual for approvals of such type and which the Peoples Board reasonably determines would either before or after the Effective Time be unduly burdensome. For purposes of this Section 7.01(b), any regulatory approval that does not result in the termination of all outstanding Regulatory Orders applicable to Limestone and/or its Subsidiaries, if any, prior to or at the Effective Time shall be deemed to have a Material Adverse Effect on Peoples and its Subsidiaries taken as a whole after giving effect to the consummation of the Merger.

(c) ***No Injunction.*** No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, judgment, decree, injunction or other order (whether temporary, preliminary or permanent) which is in effect and prohibits consummation of the transactions contemplated by this Agreement.

(d) ***Listing of Peoples Common Shares.*** The Peoples Common Shares to be issued in the Parent Merger shall have been authorized for listing on the NASDAQ – Global Select Market®.

(e) ***Effectiveness of Registration Statement and Joint Proxy Statement/Prospectus.*** The Registration Statement and Joint Proxy Statement/Prospectus shall have been declared effective by the SEC and shall not be subject to any stop order or any threatened stop order by the SEC.

7.02 ***Conditions to Obligation of Limestone.*** The obligation of Limestone to consummate the Merger is also subject to the fulfillment or written waiver by Limestone prior to the Effective Time of each of the following conditions:

(a) ***Representations and Warranties.*** The representations and warranties of Peoples set forth in this Agreement shall be true and correct in all material respects, subject to Section 5.02, as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date shall be true and correct as of such date and any

representation and warranty that is qualified by absence of a Material Adverse Effect shall be true and correct in all respects), and Limestone shall have received a certificate, dated the Effective Date, signed on behalf of Peoples, by the chief executive officer of Peoples to such effect.

(b) Performance of Obligations of Peoples. Peoples shall have performed in all material respects all obligations required to be performed by Peoples under this Agreement at or prior to the Effective Time, and Limestone shall have received a certificate, dated the Effective Date, signed on behalf of Peoples by the Chief Executive Officer of Peoples to such effect.

(c) No Material Adverse Effect. From the date of this Agreement, there shall not have occurred any event, circumstance or development that has had or could reasonably be expected to have a Material Adverse Effect on Peoples.

(d) Tax Opinion. Limestone shall have received a written opinion of counsel satisfactory to it, in form and substance reasonably satisfactory to Limestone, dated as of the Closing Date, to the effect that, on the basis of facts, representations and assumptions set forth or referred to in the written opinion, the Parent Merger will qualify as a “reorganization” within the meaning of Section 368(a) of the Code, and that no gain or loss will be recognized by shareholders of Limestone to the extent they receive shares of Peoples Common Shares in connection with the Parent Merger in exchange for their shares of Limestone Common Stock, except that gain or loss will be recognized with respect to any cash received. In rendering the written opinion, such counsel may require and rely upon representations contained in certificates of officers of Limestone and Peoples, reasonably satisfactory in form and substance to such counsel.

7.03 Conditions to Obligation of Peoples. The obligation of Peoples to consummate the Merger is also subject to the fulfillment or written waiver by Peoples prior to the Effective Time of each of the following conditions:

(a) Representations and Warranties. The representations and warranties of Limestone set forth in this Agreement shall be true and correct in all material respects, subject to Section 5.01, as of the date of this Agreement and as of the Effective Time as though made on and as of the Effective Time (except that representations and warranties that by their terms speak as of the date of this Agreement or some other date shall be true and correct as of such date and any representation and warranty that is qualified by absence of a Material Adverse Effect shall be true and correct in all respects) and Peoples shall have received a certificate, dated the Effective Date, signed on behalf of Limestone, by the president of Limestone to such effect.

(b) Performance of Obligations of Limestone. Limestone shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Effective Time, and Peoples shall have received a certificate, dated the Effective Date, signed on behalf of Limestone by the president of Limestone to such effect.

(c) Consents. Limestone shall have obtained the consent or approval of each Person (other than Governmental Authorities) whose consent or approval shall be required in connection with the transactions contemplated hereby under any Loan or credit agreement, note, mortgage, indenture, lease, license or other agreement or instrument, except those for which failure to obtain such consents and approvals would not, individually or in the aggregate, in Peoples’ reasonable estimate have a Material Adverse Effect, after the Effective Time, on the Surviving

Corporation, including any consent or approval required for the assignment of any Material Contracts under Section 5.01(j).

(d) FIRPTA Certification. Peoples shall have received a statement executed on behalf of Limestone, dated as of the Effective Date, satisfying the requirements of Treasury Regulations Section 1.1445-2(c)(3) (in a form reasonably acceptable to Peoples) certifying that the Limestone Common Stock do not represent United States real property interests within the meaning of Section 897 of the Code and the Treasury regulations promulgated thereunder.

(e) Dissenting Shares. The holders of not more than 5% of the outstanding Limestone Common Stock shall have perfected their dissenters' rights in accordance with the KBCA.

(f) Real Estate. There shall have been no condemnation, eminent domain or similar proceedings commenced or threatened in writing by any Government Authority with respect to any real estate owned by Limestone or any of its Subsidiaries, including real estate acquired in connection with foreclosure. Either (i) the results of each Phase I as reported shall be satisfactory to Peoples, or (ii) any violation or potential violation of the representations and warranties contained in Section 5.01(o) of this Agreement disclosed in a Phase I report shall have been remedied by Limestone or any of its Subsidiaries to the reasonable satisfaction of Peoples.

(g) Tail Policy. Limestone shall have procured the Tail Policy in accordance with the terms and subject to the conditions of Section 6.18(b).

(h) Other Subsidiaries Dissolutions. The dissolutions contemplated by the Other Subsidiaries Dissolutions shall have been completed in a manner and pursuant to documentation reasonably acceptable to Peoples.

(i) KTC Divestiture. The transactions contemplated by the KTC Divestiture shall have been completed in a manner and pursuant to documentation reasonably acceptable to Peoples.

(j) Estoppel Certificates. Limestone shall have delivered to Peoples an estoppel certificate, in such form as is acceptable to Peoples, for each lease agreement set forth in Section 5.01(t) of the Limestone Disclosure Schedule from the applicable counterparty.

(m) No Material Adverse Effect. From the date of this Agreement, there shall not have occurred any event, circumstance or development that has had or could reasonably be expected to have a Material Adverse Effect on Limestone.

## ARTICLE VIII Termination

8.01 **Termination**. This Agreement may be terminated, and the Merger may be abandoned:



(a) At any time prior to the Effective Time, by the mutual written consent of Peoples and Limestone, if the board of directors of each so determines by vote of a majority of the members of its entire board.

(b) At any time prior to the Effective Time, by Peoples or Limestone upon written notice to the other party, if its board of directors so determines by vote of a majority of the members of the entire board, in the event of either (i) a breach by the other party of any representation or warranty contained herein, which breach cannot be or has not been cured within 30 days after the giving of written notice to the breaching party of such breach, or (ii) a breach by the other party of any of the covenants or agreements contained herein, which breach cannot be or has not been cured within 30 days after the giving of written notice to the breaching party of such breach; provided that such breach (whether under (i) or (ii)) would be reasonably likely, individually or in the aggregate with other breaches, in the reasonable opinion of the non-breaching party, to result in a Material Adverse Effect.

(c) At any time prior to the Effective Time, by Peoples or Limestone upon written notice to the other party, if its board of directors so determines by vote of a majority of the members of its entire board, in the event that the Parent Merger is not consummated by July 31, 2023 (or such later date as to which Limestone and Peoples may mutually agree in writing), except to the extent that the failure of the Parent Merger then to be consummated arises out of or results from the knowing action or inaction of the party seeking to terminate pursuant to this Section 8.01(c) in breach of such party's obligations under this Agreement.

(d) By Limestone or Peoples upon written notice to the other party, if its board of directors so determines by a vote of a majority of the members of its entire board, in the event (i) the approval of any Governmental Authority required for consummation of the Merger and the other transactions contemplated by this Agreement shall have been denied and the denial has become final and nonappealable, (ii) any Governmental Authority whose approval is required for consummation of the Merger and the other transactions contemplated by this Agreement shall have requested, directed or advised Peoples or Limestone to withdraw its application for approval of the Merger, or (iii) any Governmental Authority of competent jurisdiction shall have issued a final nonappealable law or order permanently enjoining or otherwise prohibiting or making illegal the consummation of the Parent Merger or the Subsidiary Bank Merger.

(e) By either Limestone or Peoples if the Requisite Limestone Vote shall not have been obtained at the Limestone Meeting duly convened therefor or at any adjournment or postponement thereof; provided, that no party may terminate this Agreement pursuant to this Section 8.01(e) if the party has breached in any material respect any of its obligations under this Agreement, in each case in a manner that primarily caused the failure to obtain the Requisite Limestone Vote at the Limestone Meeting or at any adjournment or postponement thereof.

(f) By:

(i) Limestone if (A) the Limestone Board (or a duly authorized committee thereof) has authorized an Acceptance of Superior Proposal, and (B) Limestone has complied in all respects with Section 6.06; provided, that the right of Limestone to terminate this Agreement pursuant to this Section 8.01(f) is conditioned on and subject to the prior payment by

Limestone to Peoples of the Termination Fee in accordance with Section 8.02(b). Any purported termination pursuant to this Section 8.01(f) shall be void and of no force or effect if Limestone shall not have paid and Peoples shall not have received the Termination Fee; or

(ii) Peoples prior to the time the Requisite Limestone Vote is obtained, if (A) the Limestone Board shall have (1) failed to include the Limestone Recommendation in the Joint Proxy Statement/Prospectus, or withdrawn, modified or qualified the Limestone Recommendation in a manner adverse to Peoples, or publicly disclosed that it intends to do so, or failed to recommend against acceptance of a tender offer or exchange offer constituting an Acquisition Proposal that has been publicly disclosed within five (5) business days after the commencement of the tender or exchange offer, in any case whether or not permitted by the terms hereof or (2) recommended or endorsed an Acquisition Proposal or publicly disclosed its intention to do so, or failed to issue a press release announcing its unqualified opposition to the Acquisition Proposal within five (5) business days after an Acquisition Proposal is publicly announced, or (B) Limestone or its Board of Directors has breached its obligations under Section 6.02 or Section 6.06 in any material respect; provided, in each case, that Peoples is not in breach of this Agreement and its representations and warranties contained in this Agreement shall remain true and correct in all material respects (without regard to any supplement or amendment to the Peoples Disclosure Schedule after the date hereof).

(g) By written notice of Limestone to Peoples if, and only if, both of the following conditions are satisfied at any time during the five-day period commencing on the Determination Date, such termination to be effective on the tenth day following the Determination Date:

(i) the Peoples Market Value on the Determination Date is less than the Peoples Market Price multiplied by 0.825; and

(ii) the number obtained by dividing the Peoples Market Value on the Determination Date by the Peoples Market Price shall be less than the Index Ratio minus 0.175;

Subject, however, to the following three sentences: If Limestone elects to exercise its termination right pursuant to this Section 8.01(g), it shall give prompt written notice thereof to Peoples. During the five business day period commencing with Peoples' receipt of such notice, Peoples shall have the option to increase the Exchange Ratio to equal a quotient, the numerator of which is equal to the product of the Peoples Market Price, the Exchange Ratio (as then in effect), and the Index Ratio minus 0.175 and the denominator of which is equal to the Peoples Market Value on the Determination Date. If within such five business day period, Peoples delivers written notice to Limestone that it intends to proceed with the Parent Merger by paying such additional consideration as contemplated by the preceding sentence, and notifies Limestone of the revised Exchange Ratio, then no termination shall have occurred pursuant to this Section 8.01(g), and this Agreement shall remain in full force and effect in accordance with its terms (except that the Exchange Ratio shall have been so modified).

For purposes of this Section 8.01(g), the following terms shall have the meanings indicated below:

“Determination Date” shall mean any date following the first date on which all regulatory approvals (and waivers, if applicable) necessary for consummation of the Merger have been received (disregarding any waiting period) and prior to the Effective Date.

“Final Index Price” means the average of the daily closing value of the Index for the ten consecutive trading days immediately preceding the Determination Date.

“Index” means the NASDAQ Bank Index or, if such Index is not available, such substitute or similar index as substantially replicates the NASDAQ Bank Index.

“Index Ratio” means the Final Index Price divided by the Initial Index Price.

“Initial Index Price” means \$4,112.24, the closing value of the Index on October 21, 2022.

“Peoples Market Price” shall mean the volume average weighted closing sale price of a Peoples Common Share on The NASDAQ Global Select Market® during the 20 consecutive trading days immediately preceding the date of this Agreement.

“Peoples Market Value” means, as of any specified date, the average of the volume weighted daily closing sales prices of a share of Peoples Common Shares as reported on The NASDAQ Global Select Market® for the ten consecutive trading days immediately preceding such specified date.

(h) by Limestone prior to the time the Requisite Peoples Vote is obtained, if (A) the Peoples Board shall have failed to include the Peoples Recommendation in the Joint Proxy Statement/Prospectus, or withdrawn, modified or qualified the Peoples Recommendation in a manner adverse to Limestone, or publicly disclosed that it intends to do so, or (B) Peoples or its Board of Directors has otherwise breached its obligations under Section 6.02 in any material respect; provided, in each case, that Limestone is not in breach of this Agreement and its representations and warranties contained in this Agreement shall remain true and correct in all material respects (without regard to any supplement or amendment to the Limestone Disclosure Schedule after the date hereof).

## 8.02 *Effect of Termination and Abandonment; Enforcement of Agreement.*

(a) In the event of termination of this Agreement pursuant to Section 8.01, no party to this Agreement shall have any liability or further obligation to any other party hereunder except that (i) Section 6.16, this Section 8.02, and Article IX shall survive any termination of this Agreement; and (ii) notwithstanding anything to the contrary contained in this Agreement, except as set forth in Section 8.02(c) and (d), neither Peoples nor Limestone shall be relieved or released from any liabilities or damages arising out of its fraud or willful and material breach of any provision of this Agreement occurring prior to termination, and termination of this Agreement will not relieve a breaching party from liability for any breach of any covenant, agreement, representation or warranty of this Agreement (A) giving rise to such termination and (B) resulting from any willful and material breach or fraud.

(b) In the event that:

(i)(A) after the date of this Agreement and prior to the termination of this Agreement, a bona fide Acquisition Proposal shall have been made known to senior management or the Limestone Board or has been made directly to the Limestone shareholders generally or any Person shall have publicly announced (and, in each case, not unconditionally withdrawn) an Acquisition Proposal with respect to Limestone, and thereafter this Agreement is terminated by Peoples pursuant to Section 8.01(b) as a result of a willful breach by Limestone; and (B) prior to the date that is twelve (12) months after the date of the termination of this Agreement, Limestone enters into a definitive agreement or consummates a transaction with respect to an Acquisition Proposal (whether or not the same Acquisition Proposal as that referred to above), then Limestone shall, on the earlier of the date it enters into the definitive agreement and the date of consummation of the transaction, pay Peoples, by wire transfer of same day funds (to an account designated in writing by Peoples), a fee equal to \$8,300,000 (the “Termination Fee”); and

(ii) this Agreement is terminated by Limestone or Peoples pursuant to Section 8.01(f), then Limestone shall pay Peoples, by wire transfer of same day funds (to an account designated in writing by Peoples), the Termination Fee no later than two (2) business days after the termination of this Agreement.

(c) Notwithstanding anything to the contrary herein, but without limiting the right of any party to recover liabilities or damages arising out of the other party’s fraud, in the event that this Agreement is terminated as provided in Section 8.01 under circumstances where the Termination Fee is payable to Peoples, and paid in full by Limestone pursuant to this Section 8.02, the payment of such Termination Fee shall be the sole and exclusive remedy available to Peoples and the maximum aggregate liability of Limestone with respect to this Agreement and the transactions contemplated by this Agreement, and Limestone shall have no further liability with respect to this Agreement or the transactions contemplated hereby to Peoples or any of its Affiliates or Representatives.

(d) Each party acknowledges that the agreements contained in Section 8.02 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the other party would not enter into this Agreement; accordingly, if Limestone fails promptly to pay a Termination Fee owed hereunder, and, in order to obtain the payment Peoples commences a suit which results in a judgment against Limestone for payment of any such amount, Limestone shall pay the costs and expenses of Peoples (including reasonable attorneys’ fees and expenses) in connection with the suit. In addition, if Limestone fails to pay the Termination Fee as and when due hereunder, then Limestone shall pay interest on the overdue amounts (for the period commencing as of the date that the overdue amount was originally required to be paid and ending on the date that the overdue amount is actually paid in full) at a rate per annum equal to the “prime rate” (as published in the *Wall Street Journal*) in effect on the date on which the payment was required to be made for the period commencing as of the date that the overdue amount was originally required to be paid. The Termination Fee constitutes liquidated damages and not a penalty, and, except in the case of fraud, shall be (together with the amounts specified in this Section 8.02(d)) the sole monetary remedy of Peoples in the event of a termination of this Agreement specified in the section under circumstances where the Termination Fee is payable and is paid in full.



## ARTICLE IX

### Miscellaneous

9.01 **No Survival.** None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Effective Time, other than those covenants and agreements contained herein and therein which by their terms apply in whole or in part after the Effective Time.

9.02 **Amendment.** Subject to compliance with applicable law, this Agreement may be amended by the parties hereto at any time before or after the receipt of the Requisite Limestone Vote or the Requisite Peoples Vote; provided, however, that after the receipt of the Requisite Limestone Vote or the Requisite Peoples Vote, there may not be, without further approval of such shareholders of Limestone or Peoples, as applicable, any amendment of this Agreement that requires such further approval under applicable law. This Agreement may not be amended, modified or supplemented in any manner, whether by course of conduct or otherwise, except by an instrument in writing signed on behalf of each of the parties.

9.03 **Extension; Waiver.** At any time prior to the Effective Time, the parties hereto may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations or other acts of the other party hereto, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto, and (c) waive compliance with any of the agreements or satisfaction of any conditions for its benefit contained herein; provided, however, that after the receipt of the Requisite Limestone Vote or the Requisite Peoples Vote, there may not be, without further approval of such shareholders of Limestone or Peoples, as applicable, any extension or waiver of this Agreement or any portion thereof that requires such further approval under applicable law. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party, but such extension or waiver or failure to insist on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9.04 **Counterparts.** This Agreement may be executed in counterparts (including by electronic means), all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

9.05 **Confidential Supervisory Information.** Notwithstanding any other provision of this Agreement, no disclosure, representation, or warranty shall be made (or other action taken) pursuant to this Agreement that would involve the disclosure of confidential supervisory information (including “confidential supervisory information” as defined in any regulation or rule adopted or promulgated by a Regulatory Authority) by any party to this Agreement to the extent prohibited by applicable law. To the extent legally permissible, appropriate substitute disclosures or actions shall be made or taken under circumstances in which the limitations of the preceding sentence apply.

9.06 **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to any applicable conflicts of law

principles. Each party agrees that it will bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contemplated hereby exclusively in any federal or state court located in Columbus, Franklin County, Ohio (the “Chosen Courts”), and, solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement, (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party and (iv) agrees that service of process upon such party in any such action or proceeding will be effective if notice is given in accordance with Section 9.06.

**9.07 Waiver of Jury Trial.** EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW AT THE TIME OF INSTITUTION OF THE APPLICABLE LITIGATION, ANY RIGHT THE PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 9.07.

**9.08 Expenses.** Each party hereto will bear all expenses incurred by it in connection with this Agreement and the transactions contemplated hereby.

**9.09 Notices.** All notices and other communications hereunder shall be in writing and shall be deemed duly given (i) on the date of delivery if delivered personally, or if by email, upon confirmation of receipt, (ii) on the first (1st) business day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (iii) on the earlier of confirmed receipt or the seventh (7th) business day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered to the addresses set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

If to Limestone,  
to: Limestone Bancorp, Inc.  
2500 Eastpoint Parkway  
Louisville, Kentucky 40223-4156  
Attention: John T. Taylor  
Email: JTaylor@limestonebank.com

With a copy to: Wyatt, Tarrant & Combs, LLP  
400 W. Market Street, Suite 2000  
Louisville, Kentucky 40202  
Attention: Cynthia W. Young  
Email: cyoung@wyattfirm.com

If to Peoples, to: Peoples Bancorp Inc.  
138 Putnam Street  
Marietta, Ohio 45750  
Attention: Charles W. Sulerzyski, President & CEO  
Email: Chuck.Sulerzyski@pebo.com

With a copy to: Peoples Bancorp Inc.  
138 Putnam Street  
Marietta, Ohio 45750  
Attention: M. Ryan Kirkham, Executive Vice  
President/General Counsel  
Email: Ryan.Kirkham@pebo.com

9.10 ***Entire Understanding.*** This Agreement, the Support Agreements and any separate agreement entered into by the parties on even date herewith represent the entire understanding of the parties hereto with reference to the transactions contemplated hereby and thereby and this Agreement supersedes any and all other oral or written agreements heretofore made (other than such Support Agreements or any such separate agreement).

9.11 ***Assignment; Third-Party Beneficiaries.*** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other party. Any purported assignment in contravention hereof shall be null and void. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns. This Agreement (including the documents and instruments referred to herein) is not intended to and does not confer upon any Person other than the parties hereto any rights or remedies hereunder, including the right to rely upon the representations and warranties set forth herein, except the rights of the holders of Limestone Common Stock to receive the Merger Consideration in the Parent Merger as provided in Article III shall inure to the benefit of such holders thereunder at and after the Effective Time and subject to Section 6.18. The representations and warranties in this Agreement are the product of negotiations among the parties hereto and are for the sole benefit of the parties. Any inaccuracies in such representations and warranties are subject to waiver by the parties hereto in accordance herewith without notice or liability to any other person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties hereto of risks associated with particular

matters regardless of the knowledge of any of the parties hereto. Consequently, Persons other than the parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date. Notwithstanding any other provision in this Agreement to the contrary, no consent, approval or agreement of any third-party beneficiary will be required to amend, modify or waive any provision of this Agreement.

#### 9.12 ***Interpretation.***

The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. When a reference is made in this Agreement to Articles, Sections, Exhibits or Schedules, such reference shall be to an Article or Section of or Exhibit or Schedule to this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The word “or” shall not be exclusive. References to “the date hereof” shall mean the date of this Agreement.

9.13 ***Specific Performance.*** The parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with its specific terms or were otherwise breached. Accordingly, the parties shall be entitled to specific performance of the terms of this Agreement, including an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof (including the parties’ obligation to consummate the Parent Merger), in addition to any other remedy to which they are entitled at law or in equity. Each of the parties hereby further waives (i) any defense in any action for specific performance that a remedy at law would be adequate and (ii) any requirement under any law to post security or a bond as a prerequisite to obtaining equitable relief.

9.14 ***Severability.*** Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction, and this Agreement shall be reformed, construed and enforced in such jurisdiction such that the invalid, illegal or unenforceable provision or portion thereof shall be interpreted to be only so broad as is enforceable.

9.15 ***Delivery by Electronic Transmission.*** This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments or waivers hereto or thereto, to the extent signed and delivered by e-mail delivery of a “.pdf” format data file, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any such agreement or instrument shall raise the use of e-mail delivery of a “.pdf” format data file to deliver a signature to this Agreement or any amendment hereto or the fact that any signature or agreement or instrument was transmitted or



communicated through e-mail delivery of a “.pdf” format data file as a defense to the formation of a contract and each party hereto forever waives any such defense.

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**AGREEMENT AND PLAN OF MERGER**  
**Signature Page**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.

**LIMESTONE BANCORP, INC.**

By \_\_\_\_\_  
John T. Taylor, President and CEO

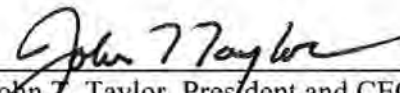
**PEOPLES BANCORP INC.**

By Charles W. Sulerzyski  
Charles W. Sulerzyski, President and CEO

**AGREEMENT AND PLAN OF MERGER**  
**Signature Page**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in counterparts by their duly authorized officers, all as of the day and year first above written.

**LIMESTONE BANCORP, INC.**

By   
John T. Taylor, President and CEO

**PEOPLES BANCORP INC.**

By \_\_\_\_\_  
Charles W. Sulcrzyski, President and CEO

**EXHIBIT A****FORM OF DIRECTOR SUPPORT AGREEMENT**

**THIS SUPPORT AGREEMENT** (this “Agreement”), is entered into as of \_\_\_\_\_, 2022, by and among Peoples Bancorp Inc., a financial holding company incorporated under Ohio law (“Peoples”) and \_\_\_\_\_ (“Shareholder”).

**WHEREAS**, concurrently with the execution and delivery of this Agreement, Peoples and Limestone are entering into an Agreement and Plan of Merger, dated as of the date of this Agreement (as amended or supplemented from time to time, the “Merger Agreement”), pursuant to which, among other things, Limestone shall be merged with and into Peoples, upon the terms and subject to the conditions set forth in the Merger Agreement. Capitalized terms not otherwise defined in this Agreement shall have meanings provided in the Merger Agreement.

**WHEREAS**, as of the date of this Agreement, Shareholder is the record and beneficial owner and has the power to vote the number of shares of Limestone Common Stock set forth, and in the manner reflected, on Attachment A to this Agreement (the shares listed on Attachment A, together with all shares of Limestone Common Stock subsequently acquired by the Shareholder during the term of this Agreement, are referred to in this Agreement as the “Owned Shares”).

**WHEREAS**, as an inducement and condition to entering into the Merger Agreement, Peoples has required that Shareholder agree, and Shareholder has agreed, to enter into this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements contained herein, and intending to be legally bound hereby, the parties hereby agree as follow:

**ARTICLE I**  
**VOTING AGREEMENT**

Section 1.1 Agreement to Vote. Shareholder hereby agrees that, during the time this Agreement is in effect, at the Limestone Meeting, and at any other meeting of the shareholders of Limestone, however called, or any adjournment or postponement thereof, Shareholder shall:

(a) appear at each meeting or otherwise cause the Owned Shares to be counted as present at each meeting for purposes of calculating a quorum; and

(b) vote (or cause to be voted), in person or by proxy, all of the Owned Shares (i) in favor of (A) the adoption and approval of the Parent Merger, the Merger Agreement and the transactions contemplated thereby, (B) any other matter that is required to facilitate the transactions contemplated by the Merger Agreement and (C) any proposal to adjourn or postpone the meeting to a later date if there are not sufficient votes to approve the Parent Merger, the Merger Agreement and the transactions contemplated thereby; (ii) against any action or agreement that could reasonably be expected to result in a breach of any covenant, representation or warranty or



any other obligation or agreement of Limestone contained in the Merger Agreement or of Shareholder contained in this Agreement; and (iii) against any Acquisition Proposal or any other action, agreement or transaction that is intended, or could reasonably be expected, to materially impede, interfere or be inconsistent with, delay, postpone, discourage or materially and adversely affect consummation of the Parent Merger or the transactions contemplated by the Merger Agreement or the performance by Shareholder of Shareholder's obligations under this Agreement.

Section 1.2 Shareholder Capacity. Notwithstanding anything to the contrary contained in this Agreement, Shareholder makes no agreement or understanding in this Agreement in Shareholder's capacity as a director or officer, as applicable, of Limestone or the Limestone Subsidiaries, and nothing in this Agreement: (a) will limit or affect any actions or omissions taken by Shareholder in Shareholder's capacity as such a director or officer, as applicable, of Limestone or the Limestone Subsidiaries, including in exercising rights under the Merger Agreement, and no actions or omissions taken in the Shareholder's capacity as a director or officer of Limestone or its Subsidiaries shall be deemed a breach of this Agreement; or (b) will be construed to prohibit, limit or restrict Shareholder from exercising Shareholder's fiduciary duties as a director or officer, as applicable, to Limestone, the Limestone Subsidiaries or their respective shareholders.

## **ARTICLE II**

### **REPRESENTATIONS AND WARRANTIES OF SHAREHOLDER**

Shareholder represents and warrants to Peoples as follows:

#### Section 2.1 Authority; Authorization.

(a) Shareholder has all requisite power, right, authority and capacity to execute and deliver this Agreement, to perform Shareholder's obligations under this Agreement, and to consummate the transactions contemplated by this Agreement.

(b) This Agreement has been duly and validly executed and delivered by Shareholder, and the execution, delivery and performance of this Agreement by Shareholder and the consummation of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of Shareholder, and no other actions or proceedings on the part of Shareholder are necessary to authorize this Agreement or to consummate the transactions contemplated by this Agreement.

(c) Assuming the authorization, execution and delivery of this Agreement by Peoples, this Agreement constitutes a legal, valid and binding obligation of Shareholder, enforceable against Shareholder in accordance with its terms.

(d) If Shareholder is married and the Owned Shares set forth by the name of Shareholder on the signature page to this Agreement constitute property owned jointly with Shareholder's spouse, this Agreement has been executed by Shareholder's spouse and constitutes the valid and binding agreement of Shareholder's spouse. If this Agreement is being executed in a representative or fiduciary capacity, the person signing this Agreement has full power and authority to enter into and perform this Agreement.

Section 2.2 Non-Contravention. The execution and delivery of this Agreement by Shareholder does not, and the consummation of the transactions contemplated by this Agreement and the compliance with the provisions of this Agreement will not (a) to the knowledge of Shareholder, require Shareholder to obtain the consent or approval of, or make any filing with or notification to, any governmental or regulatory authority, domestic or foreign, (b) require the consent or approval of any other person pursuant to any agreement, obligation or instrument binding on Shareholder, (c) conflict with or violate any organizational document or law, rule, regulation, order, judgment or decree applicable to Shareholder, or (d) violate any other agreement to which Shareholder is a party including, without limitation, any voting agreement, shareholder agreement, irrevocable proxy or voting trust. The Owned Shares are not, with respect to the voting or transfer of the Owned Shares, subject to any other agreement, including any voting agreement, shareholder agreement, irrevocable proxy or voting trust.

Section 2.3 Ownership of Securities. On the date of this Agreement, the Owned Shares set forth on Attachment A to this Agreement are owned of record or beneficially by Shareholder in the manner reflected on Attachment A, include all of the shares of Limestone Common Stock owned of record or beneficially by Shareholder, and are free and clear of any proxy or voting restriction, claims, liens, encumbrances and security interests (other than as created by this Agreement). As of the date of this Agreement, except as reflected on Attachment A, Shareholder has, and at the Limestone Meeting or any other shareholder meeting of Limestone in connection with the Parent Merger, the Merger Agreement and the transactions contemplated by the Merger Agreement (except respecting Owned Shares that Shareholder is permitted to Transfer (as defined in Section 3.2(a) below) pursuant to this Agreement), Shareholder will have, sole voting power and sole dispositive power with respect to all of the Owned Shares. For purposes of this Agreement, the term “beneficial ownership” shall be interpreted in accordance with Rule 13d-3 under the Securities Exchange Act of 1934, as amended.

Section 2.4 Absence of Litigation. There is no suit, action, investigation or proceeding pending or, to the knowledge of Shareholder, threatened against or affecting Shareholder or any of its affiliates before or by any governmental authority that could reasonably be expected to impair the ability of Shareholder to perform its obligations under this Agreement or to consummate the transactions contemplated by this Agreement on a timely basis.

Section 2.5 Reliance by Peoples. Shareholder understands and acknowledges that Peoples is entering into the Merger Agreement in reliance upon Shareholder’s execution, delivery and performance of this Agreement.

### **ARTICLE III** **COVENANTS**

Section 3.1 No Solicitation; Notice of Acquisitions; Proposals Regarding Prohibited Transactions.

(a) Shareholder agrees, that during the term of this Agreement, Shareholder shall not, and shall not permit any investment banker, financial advisor, attorney, accountant or other representative retained by Shareholder, directly or indirectly, to (i) take any of the actions specified

in Section 6.06 of the Merger Agreement, except as permitted by such Section 6.06 of the Merger Agreement, (ii) participate in, directly or indirectly, a “solicitation” of “proxies” (as those terms are used in the rules of the SEC) or powers of attorney or similar rights to vote, or seek to advise or influence any person with respect to the voting of, any shares of Limestone Common Stock in connection with any vote or other action on any matter of a type described in Section 1.1(b) of this Agreement, other than to recommend that shareholders of Limestone vote in favor of the adoption and approval of the Merger Agreement and the Parent Merger and as otherwise expressly permitted by this Agreement or the Merger Agreement. Except as permitted by the Merger Agreement, Shareholder agrees immediately to cease and cause to be terminated any activities, discussions or negotiations conducted before the date of this Agreement with any persons other than Peoples with respect to any possible Acquisition Proposal and will take all necessary steps to inform any investment banker, financial advisor, attorney, accountant or other representative retained by him, her or it of the obligations undertaken by Shareholder pursuant to this Section 3.1.

(b) Shareholder hereby agrees to notify Peoples promptly (and, in any event, within 24 hours) in writing of the number of any additional shares of Limestone Common Stock of which Shareholder acquires beneficial or record ownership on or after the date hereof.

### Section 3.2 Restrictions on Transfer and Proxies; Non-Interference.

(a) Shareholder agrees that it will not, prior to the receipt of the Requisite Limestone Vote or the termination of this Agreement, Transfer or agree to Transfer any Owned Shares other than with Peoples’ prior written consent. For purposes of this Agreement, “Transfer” shall mean to, other than in connection with the Parent Merger or the other transactions contemplated by the Merger Agreement, offer, sell, contract to sell, pledge, assign, distribute by gift or donation, or otherwise dispose of (or enter into any transaction which is designed to, or might reasonably be expected to, result in the disposition of (whether by actual disposition or effective economic disposition due to cash settlement or otherwise)), directly or indirectly, any shares of capital stock of Limestone or any securities convertible into, or exercisable or exchangeable for such capital stock, or publicly announce an intention to effect any such transaction. Notwithstanding the foregoing, Shareholder may make gifts of Owned Shares during the term of this Agreement if the donee enters into an agreement containing covenants governing the voting and transfer of the transferred Owned Shares equivalent to those set forth in this Agreement.

(b) Shareholder hereby covenants and agrees that, except for this Agreement, it (i) has not entered into, and shall not enter into at any time while this Agreement remains in effect, any voting agreement or voting trust with respect to the Owned Shares, (ii) has not granted, and except for proxies granted as contemplated by Section 1.1(b), shall not grant at any time while this Agreement remains in effect, a proxy, consent or power of attorney with respect to the Owned Shares, (iii) has not taken any action, and shall not take any action at any time while this Agreement remains in effect, that would or is reasonably likely to (A) make any representation or warranty contained in this Agreement untrue or incorrect in any material respect or (B) have the effect of preventing Shareholder from performing its obligations under this Agreement.

Section 3.3 Dissenters’ Rights. Shareholder agrees not to exercise any right to dissent (including, without limitation, under any rights set forth in Sections 271B.13-010 through

271B.13-310 of the KBCA) as to any Owned Shares which may arise with respect to the Parent Merger or the transactions contemplated by the Merger Agreement.

Section 3.4 Stop Transfer. Shareholder agrees that it shall not request that Limestone register the transfer (book-entry or otherwise) of any certificate or uncertificated interest representing any Owned Shares prior to the receipt of the Requisite Limestone Vote, unless the transfer is made in compliance with this Agreement.

Section 3.5 Further Assurances; Cooperation.

(a) Shareholder, without further consideration, will (i) use all reasonable efforts to cooperate with Peoples and Limestone in furtherance of the transactions contemplated by the Merger Agreement, (ii) promptly execute and deliver all additional documents that may be reasonably necessary in furtherance of the transactions contemplated by the Merger Agreement, and take all reasonable actions as are necessary or appropriate to consummate the transactions contemplated by the Merger Agreement, and (iii) promptly provide any information, and make all filings, reasonably requested by Peoples for any regulatory application or filing made or approval sought in connection with the transactions contemplated by the Merger Agreement (including filings with any Regulatory Authorities).

(b) Shareholder consents to the publication and disclosure in the Proxy Statement (and, as and to the extent otherwise required by law or any Regulatory Authority or Governmental Authority, in any other documents or communications provided by Peoples or Limestone to any Regulatory Authority or Governmental Authority or to security holders of Peoples or Limestone) of Shareholder's identity and beneficial and record ownership of the Owned Shares, the nature of Shareholder's commitments, arrangements and understandings under and relating to this Agreement and the Merger Agreement and any additional requisite information regarding the relationship of Shareholder with Peoples and the Peoples Subsidiaries and/or Limestone, and the Limestone Subsidiaries.

## **ARTICLE IV** **TERMINATION**

Section 4.1 Termination. This Agreement shall terminate upon the earlier to occur of (i) the termination of the Merger Agreement in accordance with its terms and (ii) the Effective Time.

Section 4.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 4.1, this Agreement shall become void and of no effect with no liability on the part of any party hereto; provided, however, no termination of this Agreement prior to the Effective Time shall relieve any party to this Agreement from any liability for any breach of this Agreement occurring prior to the termination of this Agreement.

## **ARTICLE V** **MISCELLANEOUS**

Section 5.1 Amendment; Waivers. Any provision of this Agreement may be amended or waived if, and only if, the amendment or waiver is in writing and signed (a) in the case of an

amendment, by the parties hereto, and (b) in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege under this Agreement shall operate as a waiver the applicable right, power or privilege, nor shall any single or partial exercise any right, power or privilege preclude any other or further exercise of the applicable right, power or privilege or the exercise of any other right, power or privilege.

Section 5.2 Expenses. Subject to Section 5.8, all costs and expenses incurred in connection with this Agreement and the transactions contemplated by this Agreement shall be paid by the party incurring the expenses.

Section 5.3 Notices. All notices, requests, instructions or other communications or documents to be given or made hereunder by one party to the other party shall be in writing and (a) served by personal delivery upon the party for whom it is intended, (b) sent by an internationally recognized overnight courier service upon the party for whom it is intended, or (c) sent by email, provided that the transmission of the e-mail is promptly confirmed:

If to Shareholder: The address provided on Attachment A hereto.

If to Peoples, to: Peoples Bancorp Inc.  
138 Putnam Street  
Marietta, Ohio 45750  
Attention: Charles W. Sulerzyski, President & CEO  
Email: Chuck.Sulerzyski@pebo.com

With a copy to: Peoples Bancorp Inc.  
138 Putnam Street  
Marietta, Ohio 45750  
Attention: M. Ryan Kirkham, Executive Vice  
President/General Counsel  
Email: Ryan.Kirkham@pebo.com

Section 5.4 Entire Agreement; Assignment. This Agreement constitutes the entire agreement among the parties with respect to the subject matter of this Agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties with respect to the subject matter of this Agreement. Neither this Agreement, nor any of the rights and obligations under this Agreement, shall be transferred by Shareholder without the prior written consent of Peoples.

Section 5.5 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party to this Agreement and their respective successors, heirs, and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

Section 5.6 Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal



or unenforceable in any respect under any applicable law or rule in any jurisdiction, the invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in the applicable jurisdiction, and this Agreement shall be reformed, construed and enforced in the applicable jurisdiction so that the invalid, illegal or unenforceable provision or portion thereof shall be interpreted to be only so broad as is enforceable.

Section 5.7 Specific Performance; Remedies. Each of the parties to this Agreement agrees that this Agreement is intended to be legally binding and specifically enforceable pursuant to its terms and that Peoples would be irreparably harmed if any of the provisions of this Agreement are not performed in accordance with their specific terms and that monetary damages would not provide adequate remedy in such event. Accordingly, in the event of any breach or threatened breach by Shareholder of any covenant or obligation contained in this Agreement, in addition to any other remedy to which Peoples may be entitled (including monetary damages), Peoples shall be entitled to seek injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms and provisions of this Agreement. Shareholder further agrees that neither Peoples nor any other person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 5.7, and Shareholder irrevocably waives any right it may have to require the obtaining, furnishing or posting of any bond or similar instrument. All rights, powers and remedies provided under this Agreement or otherwise available in respect of this Agreement at law or in equity shall be cumulative and not alternative, and the exercise of any right, power or remedy thereof by any party shall not preclude the simultaneous or later exercise of any other such right, power or remedy by such party.

Section 5.8 Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to any applicable conflicts of law principles. Each party agrees that it will bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contemplated hereby exclusively in any federal or state court located in Columbus, Franklin County, Ohio (the “Chosen Courts”), and, solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement, (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party and (iv) agrees that service of process upon such party in any such action or proceeding will be effective if notice is given in accordance with Section 5.8. Notwithstanding any other provision in this Agreement, in the event of any action arising out of or resulting from this Agreement, the prevailing party shall be entitled to recover its costs and expenses (including reasonable attorneys' fees and expenses) incurred in connection with the action.

Section 5.9 WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE EXTENT PERMITTED BY LAW AT THE TIME OF INSTITUTION OF THE APPLICABLE LITIGATION, ANY RIGHT THE PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO

THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT: (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.9.

Section 5.10 Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 5.11 Counterparts. This Agreement may be executed in two or more counterparts (including by facsimile, email of a PDF copy, or other electronic means) all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

Section 5.12 Delivery by Facsimile or Electronic Transmission. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments or waivers hereto or thereto, to the extent signed and delivered by means of a facsimile machine or by email delivery of a “.pdf” format data file, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto or to any agreement or instrument entered into in connection with this Agreement shall raise the use of a facsimile machine or email delivery of a “.pdf” format data file to deliver a signature to this Agreement or any amendment hereto or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or email delivery of a “.pdf” format data file as a defense to the formation of a contract and each party hereto forever waives any defense based on the foregoing.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

**VOTING AGREEMENT**

**Signature Page**

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed on the day first written above.

**SHAREHOLDER**

**PEOPLES BANCORP INC.**

\_\_\_\_\_  
[Name]

By: \_\_\_\_\_  
Charles W. Sulerzyski, President and CEO

**SHAREHOLDER'S SPOUSE**

\_\_\_\_\_  
[Name]

**ATTACHMENT A**

<b><u>Shareholder</u></b>	<b><u>Address and Email</u></b>	<b><u>Owned Shares</u></b>
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**EXHIBIT B****FORM OF AGREEMENT AND PLAN OF MERGER**

This is an Agreement and Plan of Bank Merger (this “Agreement”) dated as of \_\_\_\_\_, 2022, between Peoples Bank, an Ohio-chartered commercial bank organized under the laws of the State of Ohio, being located in Marietta, county of Washington, in the State of Ohio (“Peoples Bank”), and Limestone Bank, Inc., a Kentucky commercial bank, being located in Louisville, county of Jefferson, in the State of Kentucky (“Limestone Bank”).

**RECITALS**

A. Peoples Bancorp Inc., an Ohio corporation owning all of the outstanding shares of Peoples Bank (“Peoples”), and Limestone Bancorp, Inc., a Kentucky corporation owning all of the outstanding shares of Limestone Bank (“Limestone Bancorp”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), dated October 24, 2022, pursuant to which Limestone Bancorp will merge with and into Peoples, with Peoples being the surviving corporation (“Parent Merger”).

B. The Merger Agreement contemplates that immediately following the consummation of the Parent Merger, or at such later time as Peoples may determine, Limestone Bank is to be merged with and into Peoples Bank.

C. Peoples, as the sole shareholder of Limestone Bank and Peoples Bank immediately after consummation of the Parent Merger, desires to cause Limestone Bank to merge with and into Peoples Bank immediately following the Parent Merger or at such later time as Peoples may determine (the “Limestone Bank Merger”).

D. In consideration of the recitals and the mutual agreements, covenants and undertakings contained herein and for the purpose of setting forth the terms and conditions of the Limestone Bank Merger, the parties, intending to be legally bound, agree as follows:

**AGREEMENTS**

1. Limestone Bank Merger. At the Effective Time (as hereinafter defined) and upon the terms and conditions set forth in this Agreement, Limestone Bank shall be merged with and into Peoples Bank, and Peoples Bank shall continue in existence as the surviving corporation of the merger (the “Surviving Bank”).

2. Merger Certificates. Subject to consummation of the Parent Merger and the other provisions of this Agreement, immediately after the Parent Merger or at such later time as Peoples may determine, and upon receipt of all required shareholder and regulatory approvals, Peoples Bank and Limestone Bank shall cause such certificates or articles of merger and such other documents and certificates as are



necessary to be executed and delivered for filing to the Ohio Secretary of State and the Kentucky Secretary of State ("Merger Certificates").

3. Effective Time. The date and time specified in the Merger Certificates filed with the Ohio Secretary of State and the Kentucky Secretary of State shall be deemed the effective time of the Limestone Bank Merger (the "Effective Time").

4. Articles of Incorporation and Regulations. The Articles of Incorporation of Peoples Bank, as in effect at the Effective Time, shall be the Articles of Incorporation of the Surviving Bank, until they shall be thereafter altered, amended, or repealed in accordance with law. Until amended or repealed as therein provided, the Regulations of Peoples Bank in effect at the Effective Time shall be the Regulations of the Surviving Bank.

5. Directors and Officers. The directors and officers of Peoples Bank shall be the directors and officers of the Surviving Bank until the next annual meeting of shareholders and directors of Surviving Bank, unless their tenure as officers or directors is sooner terminated.

6. Names and Offices. The name of the Surviving Bank shall be "Peoples Bank." The main office of the Surviving Bank shall be the main office of Peoples Bank immediately prior to the Effective Time. All branch offices of Peoples Bank and offices of Limestone Bank which were in lawful operation immediately prior to the Effective Time shall be the branch offices of the Surviving Bank upon consummation of the Limestone Bank Merger, subject to the opening or closing of any offices which may be authorized by Peoples Bank or Limestone Bank and applicable regulatory authorities after the date hereof.

7. Conversion of Limestone Bank Shares. At the Effective Time, each issued and outstanding share of Limestone Bank capital stock shall automatically by virtue of the Limestone Bank Merger be canceled without payment.

8. Peoples Bank Capital Stock. The shares of Peoples Bank capital stock issued and outstanding immediately prior to the Effective Time shall remain outstanding and shall not be affected by the Limestone Bank Merger.

9. Certain Effects of Merger. At the Effective Time, in addition to the effects otherwise provided by the laws of the United States, Ohio and Kentucky, Peoples Bank and Limestone Bank shall become a single corporation and the separate existence of Limestone Bank shall cease. Surviving Bank shall possess all the rights, privileges, powers and franchises of both a public and private nature of Limestone Bank subject to all of its restrictions, disabilities and duties, and shall also possess all of the property (real, personal and mixed) and all debts due to Limestone Bank. All other things or belonging to Limestone Bank shall be vested in the Surviving Bank; and all property, rights, privileges, powers and franchises and all and every other interest shall thereafter be the property of the Surviving Bank, and the title to any real estate vested by deed or otherwise in Limestone Bank shall not revert or be in any way impaired by reason of the Limestone Bank Merger. All rights of creditors and all liens of Limestone Bank shall be preserved unimpaired, and all debts, liabilities and duties of Limestone Bank shall at the

Effective Time become obligations of the Surviving Bank and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.

10. Termination. This Agreement shall be terminated upon the agreement of the parties hereto. In addition, this Agreement shall terminate automatically upon termination of the Merger Agreement prior to the consummation of the Parent Merger.

11. Conditions. The respective obligations of each party hereto to effect the Limestone Bank Merger shall be subject to: (a) the consummation of the Parent Merger; and (b) the receipt of all approvals and consents of regulatory authorities required by law to effect the Limestone Bank Merger.

12. Amendment. On or before the Effective Time, the parties may amend, modify or supplement this Plan of Merger in the manner as may be agreed upon between the parties in writing.

13. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts (including by facsimile or other electronic means), each of which shall be deemed to be an original but all of which together shall constitute one agreement.

14. Governing Law. This Agreement shall be governed in all respects by the laws of the State of Ohio.

15. Waiver. Any of the terms or conditions of this Agreement may be waived at any time by the party that is entitled to the benefit thereof.

16. Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of the other party.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized officers as of the date set forth above.

**PEOPLES BANK**

**LIMESTONE BANK, INC.**

By: \_\_\_\_\_  
Charles W. Sulerzyski, President  
and Chief Executive Officer

By: \_\_\_\_\_  
John T. Taylor, President  
and Chief Executive Officer

# EXHIBIT

# C



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
04/28/2023	202311801078	Merger (MER)	99.00	300.00	0.00	0.00

### Receipt

This is not a bill. Please do not remit payment.

DINSMORE & SHOHL LLP  
191 W. NATIONWIDE  
STE. 300  
COLUMBUS, OH 43215

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## STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Frank LaRose  
3843025

It is hereby certified that the Secretary of State of Ohio has custody of the business records for

**PEOPLES BANK**

and, that said business records show the filing and recording of:

Document(s)

**Merger**

Document No(s):

**202311801078**

Effective Date: 04/30/2023



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio this  
28th day of April, A.D. 2023.

Ohio Secretary of State





Telephone: 877.767.3453  
 Central Ohio: 614.466.3910  
 OhioSoS.gov  
 business@OhioSoS.gov  
 File online or for more information: [OhioBusinessCentral.gov](http://OhioBusinessCentral.gov)

**Mail this form to one of the following:**

Regular Filing (non expedite)  
 P.O. Box 1329  
 Columbus, OH 43216  
 Expedite Filing (Two business day processing time.  
 Requires an additional \$100.00)  
 P.O. Box 1390  
 Columbus, OH 43216

For screen readers, follow instructions located at this path.

## Certificate of Merger

To be used when at least one constituent entity is an Ohio entity.

Filing Fee: \$99

(154-MER)

Forms Must Be Typed

In accordance with the requirements of Ohio law, the undersigned corporations, banks, savings banks, savings and loan associations, limited liability companies, partnerships, limited partnerships and/or limited liability partnerships, desiring to effect a merger, set forth the following facts

**I. (Surviving) Entity**

A. Name of Entity Surviving the Merger

Peoples Bank

B. Name Change: As a result of this merger, the name of the surviving entity has changed to the following

(Complete only if name of surviving entity is changing through the merger)

C. The surviving entity is a (Please check the appropriate box and fill in the appropriate blanks)

1. ☒ Domestic (Ohio entity) ☐ Foreign (Non-Ohio Entity)

Jurisdiction of formation

2. Charter/Registration/License Number 3843025

(If licensed in Ohio as domestic or foreign)

3. ☒ For-Profit Corporation  
☐ Nonprofit Corporation  
☐ Limited Liability Company  
☐ Partnership  
☐ Limited Partnership  
☐ Limited Liability Partnership  
☐ Unincorporated Nonprofit Association

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**II. CONSTITUENT ENTITY**

Provide the name, Ohio charter/license/registration number, type of entity, jurisdiction of formation, for each entity merging out of existence. (If this is insufficient space to reflect all merging entities, please attach a separate sheet listing the additional merging entities).

Entity Name	Ohio Charter/License/ Registration Number	Jurisdiction of Formation	Type of Entity
Limestone Bank, Inc.		Kentucky	FPC

**III. MERGER AGREEMENT ON FILE**

The name and mailing address of the person or entity from whom/which eligible persons may obtain a copy of the merger agreement upon written request

Peoples Bank; Attention: M. Ryan Kirkham

Name

138 Putnam Street

Mailing Address

Marietta

City

Ohio

State

45750

Zip Code

**IV. EFFECTIVE DATE OF MERGER**

This merger is to be effective on 4/30/2023, 11:59 PM (The date specified must be on or after the date of the filing. If no date is specified, the date of filing will be the effective date of the merger).

**V. MERGER AUTHORIZED**

Each constituent entity has complied with the laws under which it exists and the laws permit the merger. The agreement of merger is authorized on behalf of each constituent entity and each person who signed the certificate on behalf of each entity is authorized to do so.

**VI. STATEMENT OF MERGER**

Upon filing this Certificate of Merger, or upon such later date as specified herein, the merging entity/entities listed herein shall merge into the listed surviving entity.

**VII. STATUTORY AGENT - To be filed ONLY if the surviving entity is a foreign entity not licensed in Ohio.**  
If the surviving entity is a foreign entity **NOT** licensed to transact business in Ohio, provide the name and address of a statutory agent upon whom any process, notice or demand may be served.

<input type="text"/>		
Name of Statutory Agent		
<input type="text"/>		
Mailing Address		
<input type="text"/>	<input type="text" value="OH"/>	<input type="text"/>
City	State	ZIP Code

**VIII. AMENDMENTS**

If a domestic corporation, limited liability company or limited partnership survives the merger, any amendments to the entity's articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity shall be filed with the certificate of merger.

☐ Amendments are attached

☒ No Amendments

**If you are amending the total number of shares, please complete this box so the appropriate filing fee is charged.**

Total number of shares previously listed in the Articles or other Amendments with the Ohio Secretary of State:

With the submission of this amendment, NEW total number of shares:

**IX. REQUIREMENTS OF CORPORATIONS MERGING OUT OF EXISTENCE**

If a domestic corporation or foreign corporation licensed to transact business in Ohio is a constituent entity and the surviving entity is not a domestic corporation or foreign corporation to be licensed in Ohio, the certificate of merger must be accompanied by the affidavits, receipts, certificates, or other evidence required by division (H) of section 1701.86 division (G) of section 1702.47 of the Revised Code with respect to each domestic constituent corporation, and/or by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code with respect to each foreign constituent corporation licensed to transact business in Ohio.

**X. QUALIFICATION OR LICENSE OF FOREIGN SURVIVING ENTITY**

A surviving foreign entity that wishes to qualify in Ohio as part of the merger must file an additional form, as listed below, but no additional filing fee is required.

Foreign Qualifying Corporation - Form 530A or B and Certificate of Good Standing  
Foreign Notice (if qualifying entity is a foreign bank, savings bank, or savings and loan association) - Form 552  
Foreign Qualifying Limited Liability Company - Form 617  
Foreign Qualifying Limited Partnership - Form 531B  
Foreign Qualifying Limited Liability Partnership - Form 537 and Evidence of Existence in Jurisdiction of Formation

DocuSign Envelope ID: 8FD1B2D0-4C7F-407D-BC08-708C07456AF2

The undersigned constituent entities (constituent entities include all merging and surviving entities) have caused this certificate of merger to be signed by their duly authorized officers, partners and representatives.

Peoples Bank

Name of entity

By: *Charles W. Sulernycki*  
Signature

Its: President and CEO  
Title

Limestone Bank, Inc.

Name of entity

By:   
Signature

Its: President and CEO  
Title

Name of entity

By:   
Signature

Its:   
Title

An authorized representative of each constituent corporation, partnership, or entity must sign the merger certificate (ORC 1701.81(A), 1702.43 (A), 1706.712(A), 1776.70(A), 1782.433(A)). this includes all merging and surviving entities.

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The undersigned constituent entities (constituent entities include all merging and surviving entities) have caused this certificate of merger to be signed by their duly authorized officers, partners and representatives.

Peoples Bank

Name of entity

By:

Signature

Its:

President and CEO

Title

Limestone Bank, Inc.

Name of entity

By:

*John T. Taylor*  
Signature

Its:

President and CEO

Title

Name of entity

By:

Signature

Its:

Title

An authorized representative of each constituent corporation, partnership, or entity must sign the merger certificate (ORC 1701.81(A), 1702.43 (A), 1706.712(A), 1776.70(A), 1782.433(A)). this includes all merging and surviving entities.

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Mike DeWine, Governor  
Jon Husted, Lt. Governor

**Department  
of Commerce**

Division of Financial Institutions  
Sheryl Maxfield, Director

**STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS**

THIS IS TO CERTIFY THAT, the Division of Financial Institutions approved the merger of Limestone Bank, Inc., Louisville, Kentucky, with and into Peoples Bank, Marietta, Ohio, as reflected in the attached certificate of merger.

IN WITNESS WHEREOF, I have hereunto set my hand this 13<sup>th</sup> day of March, 2023.

A handwritten signature in black ink, appearing to read "K. Allard", written over a horizontal line.

Kevin R. Allard  
Superintendent of Financial Institutions

77 South High Street  
21<sup>st</sup> Floor  
Columbus, Ohio 43215-6120 U.S.A.

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# EXHIBIT

# D



DATE	DOCUMENT ID	DESCRIPTION	FILING	EXPED	CERT	COPY
04/28/2023	202311801076	Merger (MER)	99.00	300.00	0.00	0.00

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191 W. NATIONWIDE  
STE. 300  
COLUMBUS, OH 43215

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## STATE OF OHIO CERTIFICATE

Ohio Secretary of State, Frank LaRose  
834364

It is hereby certified that the Secretary of State of Ohio has custody of the business records for  
**PEOPLES BANCORP INC.**

and, that said business records show the filing and recording of:

Document(s)

**Merger**

Document No(s):

**202311801076**

Effective Date: 04/30/2023



United States of America  
State of Ohio  
Office of the Secretary of State

Witness my hand and the seal of the  
Secretary of State at Columbus, Ohio this  
28th day of April, A.D. 2023.

Ohio Secretary of State



Telephone: 877.767.3453  
 Central Ohio: 614.466.3910  
[OhioSoS.gov](http://OhioSoS.gov)  
[business@OhioSoS.gov](mailto:business@OhioSoS.gov)  
 File online or for more information: [OhioBusinessCentral.gov](http://OhioBusinessCentral.gov)

**Mail this form to one of the following:**

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 Requires an additional \$100.00)

P.O. Box 1390  
 Columbus, OH 43216

For screen readers, follow instructions located at this path.

## Certificate of Merger

To be used when at least one constituent entity is an Ohio entity.

Filing Fee: \$99

(154-MER)

Forms Must Be Typed

In accordance with the requirements of Ohio law, the undersigned corporations, banks, savings banks, savings and loan associations, limited liability companies, partnerships, limited partnerships and/or limited liability partnerships, desiring to effect a merger, set forth the following facts

**I. (Surviving) Entity**

A. Name of Entity Surviving the Merger

Peoples Bancorp Inc.

B. Name Change: As a result of this merger, the name of the surviving entity has changed to the following

(Complete only if name of surviving entity is changing through the merger)

C. The surviving entity is a (Please check the appropriate box and fill in the appropriate blanks)

1. ☒ Domestic (Ohio entity)

☐ Foreign (Non-Ohio Entity)

Jurisdiction of formation

2. Charter/Registration/License Number

834364

(If licensed in Ohio as domestic or foreign)

3. ☒ For-Profit Corporation

☐ Nonprofit Corporation

☐ Limited Liability Company

☐ Partnership

☐ Limited Partnership

☐ Limited Liability Partnership

☐ Unincorporated Nonprofit Association

**II. CONSTITUENT ENTITY**

Provide the name, Ohio charter/license/registration number, type of entity, jurisdiction of formation, for each entity merging out of existence. (If this is insufficient space to reflect all merging entities, please attach a separate sheet listing the additional merging entities).

Entity Name	Ohio Charter/License/ Registration Number	Jurisdiction of Formation	Type of Entity
Limestone Bancorp, Inc.		Kentucky	FPC

**III. MERGER AGREEMENT ON FILE**

The name and mailing address of the person or entity from whom/which eligible persons may obtain a copy of the merger agreement upon written request

Peoples Bancorp Inc.; Attention: M. Ryan Kirkham

Name

138 Putnam Street

Mailing Address

Marietta

City

Ohio

State

45750

Zip Code

**IV. EFFECTIVE DATE OF MERGER**

This merger is to be effective on 4/30/2023, 11:58 PM (The date specified must be on or after the date of the filing. If no date is specified, the date of filing will be the effective date of the merger).

**V. MERGER AUTHORIZED**

Each constituent entity has complied with the laws under which it exists and the laws permit the merger. The agreement of merger is authorized on behalf of each constituent entity and each person who signed the certificate on behalf of each entity is authorized to do so.



**VI. STATEMENT OF MERGER**

Upon filing this Certificate of Merger, or upon such later date as specified herein, the merging entity/entities listed herein shall merge into the listed surviving entity.

**VII. STATUTORY AGENT - To be filed ONLY if the surviving entity is a foreign entity not licensed in Ohio.**  
If the surviving entity is a foreign entity **NOT** licensed to transact business in Ohio, provide the name and address of a statutory agent upon whom any process, notice or demand may be served.

<input type="text"/>		
Name of Statutory Agent		
<input type="text"/>		
Mailing Address		
<input type="text"/>	<input type="text" value="OH"/>	<input type="text"/>
City	State	ZIP Code

**VIII. AMENDMENTS**

If a domestic corporation, limited liability company or limited partnership survives the merger, any amendments to the entity's articles of incorporation, articles of organization, or certificate of limited partnership of the surviving domestic entity shall be filed with the certificate of merger.

☐ Amendments are attached ☒ No Amendments

**If you are amending the total number of shares, please complete this box so the appropriate filing fee is charged.**

Total number of shares previously listed in the Articles or other Amendments with the Ohio Secretary of State:

With the submission of this amendment, NEW total number of shares:

**IX. REQUIREMENTS OF CORPORATIONS MERGING OUT OF EXISTENCE**

If a domestic corporation or foreign corporation licensed to transact business in Ohio is a constituent entity and the surviving entity is not a domestic corporation or foreign corporation to be licensed in Ohio, the certificate of merger must be accompanied by the affidavits, receipts, certificates, or other evidence required by division (H) of section 1701.86 division (G) of section 1702.47 of the Revised Code with respect to each domestic constituent corporation, and/or by the affidavits, receipts, certificates, or other evidence required by division (C) or (D) of section 1703.17 of the Revised Code with respect to each foreign constituent corporation licensed to transact business in Ohio.

**X. QUALIFICATION OR LICENSE OF FOREIGN SURVIVING ENTITY**

A surviving foreign entity that wishes to qualify in Ohio as part of the merger must file an additional form, as listed below, but no additional filing fee is required.

Foreign Qualifying Corporation - Form 530A or B and Certificate of Good Standing  
Foreign Notice (if qualifying entity is a foreign bank, savings bank, or savings and loan association) - Form 552  
Foreign Qualifying Limited Liability Company - Form 617  
Foreign Qualifying Limited Partnership - Form 531B  
Foreign Qualifying Limited Liability Partnership - Form 537 and Evidence of Existence in Jurisdiction of Formation

DocuSign Envelope ID: 8FD1B2D0-4C7F-407D-BC08-708C07456AF2

The undersigned constituent entities (constituent entities include all merging and surviving entities) have caused this certificate of merger to be signed by their duly authorized officers, partners and representatives.

Peoples Bancorp Inc.  
Name of entity

By: Charles W. Sularzyski  
Signature

Its: President and CEO  
Title

Limestone Bancorp, Inc.  
Name of entity

By:   
Signature

Its: President and CEO  
Title

Name of entity

By:   
Signature

Its:   
Title

An authorized representative of each constituent corporation, partnership, or entity must sign the merger certificate (ORC 1701.81(A), 1702.43 (A), 1706.712(A), 1776.70(A), 1782.433(A)). this includes all merging and surviving entities.

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DocuSign Envelope ID: B4C855A6-B957-4979-8B18-81D8456DE03A

The undersigned constituent entities (constituent entities include all merging and surviving entities) have caused this certificate of merger to be signed by their duly authorized officers, partners and representatives.

Peoples Bancorp Inc.  
Name of entity

By:   
Signature

Its: President and CEO  
Title

Limestone Bancorp, Inc.  
Name of entity

By: Designated by: John T. Taylor  
Signature

Its: President and CEO  
Title

Name of entity

By:   
Signature

Its:   
Title

An authorized representative of each constituent corporation, partnership, or entity must sign the merger certificate (ORC 1701.81(A), 1702.43 (A), 1706.712(A), 1776.70(A), 1782.433(A)). this includes all merging and surviving entities.

C38B303C-5FAB-4BE2-931C-28172F97EA16 : 000129 of 000178

# EXHIBIT

# E



**CT Corporation**  
**Service of Process Notification**

05/30/2023

CT Log Number 543949724

**Service of Process Transmittal Summary**

**TO:** Legal Team  
Peoples Bank  
PEOPLES BANK, 138 PUTNAM STREET  
MARIETTA, OH 45750

**RE:** Process Served in Kentucky

**FOR:** Peoples Bank Ohio Co (Assumed Name) (Domestic State: OH)  
Peoples Bank (True Name)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** ROBIN COOPER, individually and on behalf of all others similarly situated vs. LIMESTONE BANK, INC. D/B/A OF PEOPLES BANK OHIO CO  
Name discrepancy noted.

**CASE #:** 23CI002712

**PROCESS SERVED ON:** C T Corporation System, Frankfort, KY

**DATE/METHOD OF SERVICE:** By Traceable Mail on 05/30/2023

**JURISDICTION SERVED:** Kentucky

**ACTION ITEMS:** CT will retain the current log  
Image SOP  
Email Notification, Legal Team legal@pebo.com  
Email Notification, Ryan Kirkham ryan.kirkham@pebo.com

**REGISTERED AGENT CONTACT:** C T Corporation System  
306 W. Main Street  
Suite 512  
Frankfort, KY 40601  
866-539-8692  
CorporationTeam@wolterskluwer.com

The information contained in this Transmittal is provided by CT for quick reference only. It does not constitute a legal opinion, and should not otherwise be relied on, as to the nature of action, the amount of damages, the answer date, or any other information contained in the included documents. The recipient(s) of this form is responsible for reviewing and interpreting the included documents and taking appropriate action, including consulting with its legal and other advisors as necessary. CT disclaims all liability for the information contained in this form, including for any omissions or inaccuracies that may be contained therein.



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Case Number: 23-CI-002712

**9236 0901 9403 8316 5039 34**

**Restricted Delivery**

CT CORPORATION SYSTEM  
306 W. MAIN STREET  
SUITE 512  
FRANKFORT, KY 40601

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AOC-E-105 Sum Code: CI  
Rev. 9-14

Commonwealth of Kentucky  
Court of Justice Courts.ky.gov

CR 4.02; Cr Official Form 1



## CIVIL SUMMONS

Case #: **23-CI-002712**

Court: **CIRCUIT**

County: **JEFFERSON Circuit**

*Plaintiff, COOPER, ROBIN VS. LIMESTONE BANK, INC., Defendant*

**TO: CT CORPORATION SYSTEM  
306 W. MAIN STREET  
SUITE 512  
FRANKFORT, KY 40601**

Memo: Related party is LIMESTONE BANK, INC. D/B/A OF PEOPLES BANK OHIO CO

The Commonwealth of Kentucky to Defendant:  
**LIMESTONE BANK, INC.**

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

*Davis L. Nicholas*

Jefferson Circuit Clerk

Date: **5/24/2023**

### Proof of Service

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Served By \_\_\_\_\_

Title \_\_\_\_\_

Summons ID: 604299041600961@00001034079  
CIRCUIT: 23-CI-002712 Certified Mail  
COOPER, ROBIN VS. LIMESTONE BANK, INC.



**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**CLASS ACTION COMPLAINT**

**JURY DEMAND**

**CLASS ACTION COMPLAINT**

Plaintiff, Robin Cooper, individually and on behalf of the class of persons preliminarily defined below (the "Class"), makes the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

**NATURE OF THE ACTION**

1. This is a civil action seeking monetary damages, restitution, and injunctive and declaratory relief from Limestone Bank, Inc. ("Defendant"), arising from its improper assessment and collection of \$35 overdraft fees ("OD Fees") on debit card transactions that were authorized on sufficient funds.

2. Besides being deceptive, these practices breach contract promises made in Defendant's adhesion contracts which, upon information and belief, include the Overdraft Opt-In Form attached hereto as Exhibit A (the "Contract").

3. Plaintiff and other Defendant customers have been injured by Defendant's practices. Plaintiff, individually and on behalf of the class of individuals preliminarily defined below, bring claims for breach of contract, including the duty of good faith and fair dealing, unjust





enrichment and violations of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300) (the “KCPA”).

### **PARTIES**

4. Plaintiff is an individual and citizen of Kentucky, and a resident of Daviess County, and has had a checking account with Defendant at all times material hereto.

5. Defendant is a bank with over \$1.5 billion in assets with and maintains several branches in Kentucky including in this County. Its principal place of business is in this County.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter because Defendant is at home in this State.

7. Defendant regularly and systematically conducts business and provides retail banking services in this state and provides retail banking services to customers in this state, including Plaintiff and members of the putative Class. As such, it is subject to the jurisdiction of this Court.

8. Venue is likewise proper in this county pursuant to KRS § 452.445 because Defendant’s principal office is in this County.

9. Pursuant to CR 8.01, the amount in controversy exceeds the minimum jurisdiction of the Jefferson Circuit Court.

### **BACKGROUND FACTS**

10. In 2021, the largest financial institutions in America charged customers almost \$11 billion in overdraft fees. Customers who carried an average balance of less than \$350 paid 84 percent of these fees. *Why Poverty Persists in America* (The New York Times, Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html>.

11. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo, Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. *See* Hugh Son, *Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check Fees*, CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>.

12. Federal regulators have also taken action. For example, the Consumer Financial Protection Bureau (CFPB) recently fined Regions Bank \$191 million, finding that it “acted unfairly and abusively” in violation of the Consumer Financial Protection Act of 2010 by assessing *the same “surprise” APSN fees at issue here*. CFPB, Enforcement Actions, Regions Bank (Sep. 28, 2022), available at [https://www.consumerfinance.gov/enforcement/actions/regions-bank\\_2022](https://www.consumerfinance.gov/enforcement/actions/regions-bank_2022) (last accessed Mar. 22, 2023).

13. In line with this industry trend, the New York Attorney General recently asked other industry leading banks to end the assessment of all OD Fees by the summer of 2022. *NY Attorney General asks banks to end overdraft fees*, Elizabeth Dilts Marshall, Reuters (April 6, 2022).

14. Through the imposition of these fees, Defendant has made substantial revenue to the tune of tens of millions of dollars, seeking to turn its customers’ financial struggles into revenue.

**I. DEFENDANT ASSESSES OVERDRAFT FEES ON DEBIT CARD TRANSACTIONS THAT WERE AUTHORIZED ON SUFFICIENT FUNDS.**

15. Plaintiff brings this action challenging Defendant’s practice of charging Overdraft Fees on what are referred to in this complaint as “Authorize Positive, Settle Negative Transactions,” or “APSN Transactions.”





16. Defendant's practice is as follows: the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Defendant immediately reduces consumers' checking accounts for the amount of the purchase, sets aside funds in the checking account to cover that transaction, and adjusts the consumer's displayed "available balance" to reflect that subtracted amount. As a result, customers' accounts will always have sufficient funds available to cover these transactions because Defendant has already held the funds for payment.

17. However, Defendant still assesses crippling Overdraft Fees on many of these transactions and misrepresents its practices in the Contract.

18. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Defendant later assesses Overdraft Fees on those same transactions when they settle days later into a negative balance. These types of transactions are APSN Transactions.

19. Defendant maintains a running account balance, tracking funds consumers have for immediate use. This running account balance is adjusted, in real-time, to account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Defendant holds the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds are not available for any other use by the account holder and are specifically reserved for a given debit card transaction.

20. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a "debit hold." During the time the debit hold remains in place, which

may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498 (Jan. 29, 2009).

21. That means when any subsequent, intervening transactions are initiated on a checking account, they are compared against an account balance that has already been reduced to account for pending debit card transactions. Therefore, many subsequent transactions incur Overdraft Fees due to the unavailability of the funds held for earlier debit card transactions.

22. Still, despite always reserving sufficient available funds to cover the transactions and keeping the held funds off-limits for other transactions, Defendant improperly charges Overdraft Fees on APSN Transactions.

23. The Consumer Financial Protection Bureau ("CFPB") has expressed concern with this very issue, flatly calling the practice "unfair" and/or "deceptive" when:

[A] financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.

At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer's available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to





mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, "Supervisory Highlights" (Winter 2015).

24. There is no justification for these practices, other than to maximize Defendant's Overdraft Fee revenue. APSN Transactions only exist because intervening transactions supposedly reduce an account balance. But Defendant is free to protect its interests and either reject those intervening transactions or charge Overdraft Fees on those intervening transactions—and it does the latter to the tune of millions of dollars each year.

25. But Defendant was not content with these millions in Overdraft Fees. Instead, it sought millions more in Overdraft Fees on APSN Transactions.

26. Besides being deceptive, unfair, and unconscionable, these practices breach contract promises made in Defendant's adhesion contracts, which fundamentally misconstrue and mislead consumers about the true nature of Defendant's processes and practices. Defendant also exploits its contractual discretion by implementing these practices to gouge its customers.

**i. Mechanics of a Debit Card Transaction**

27. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from Defendant. When a customer physically or virtually "swipes" their debit card, the credit card terminal connects, via an intermediary, to Defendant, which verifies that the customer's account is valid and that sufficient available funds exist to cover the transaction amount.

28. At this step, if the transaction is approved, Defendant immediately decrements the funds in a consumer's account and holds funds in the amount of the transaction but does not yet transfer the funds to the merchant.

29. Sometime thereafter, the funds are actually transferred from the customer's account to the merchant's account.

30. Defendant (like all banks and credit unions) decides whether to "pay" debit card transactions at authorization. For debit card transactions, that moment of decision can only occur at the point of sale, when the transaction is authorized or declined. It is at that point—and only that point—that Defendant may choose to either pay the transaction or to decline it. When the time comes to actually transfer funds for the transaction to the merchant, it is too late for the bank to deny payment—the bank has no discretion and must pay the charge. This "must pay" rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it "must pay" it when the merchant later makes a demand, regardless of other account activity. See Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

31. There is no change—no impact whatsoever—to the available funds in an account when transfer step occurs.

**ii. Defendant's Contract**

32. Upon information and belief, Defendant promises in its Contract that "[a[n] overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway." Ex. A.

33. In breach of this promises, Defendant assesses Overdraft Fees when there is enough money in the account to cover the transaction.





34. Taken together, these promises also mean that Defendant will place holds on funds at the time of the authorization of a debit card transaction, which is when Plaintiff pays the merchant, and that these holds reduce Plaintiff's available balance, which is the balance that Defendant uses to determine OD Fees.

35. Upon information and belief, Defendant further promises that authorization and payment occur simultaneously and that overdrafts will be determined at the time Defendant "authorize[s] and pay[s]" the debit card transaction:

We do **authorize and pay** overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not **authorize and pay** overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always **authorize and pay** any type of transaction.

If we do not **authorize and pay** an overdraft, your transaction will be declined.

...

What if I want [Defendant] to **authorize and pay** overdrafts on my ATM and everyday debit card transactions?

If you also want us to **authorize and pay** overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

     I do not want [Defendant] to **authorize and pay** overdrafts on my ATM and everyday debit card transactions.



\_\_\_ I want [Defendant] to **authorize and pay** overdrafts on my ATM and everyday debit card transactions.

Ex. A (emphasis added).

36. Defendant links payment to authorization **eight times**, meaning that transactions are paid, and therefore overdrafts are determined, at authorization.

37. For APSN Transactions, which are immediately deducted from a positive account balance and held aside for payment of that same transaction, there are always sufficient funds to cover those transactions—yet Defendant assesses Overdraft Fees on them anyway.

38. The above promises indicate that transactions are only overdraft transactions when they are authorized and approved into a negative account balance. Of course, that is not true for APSN Transactions.

39. In fact, Defendant actually authorizes transactions on positive funds, sets those funds aside on hold, then fails to use those same funds to post those same transactions. Instead, it uses a secret posting process described below.

40. All of the above representations and contractual promises are untrue. Defendant charges fees even when sufficient funds exist to cover transactions that are authorized into a positive balance. No express language in any document states that Defendant may impose fees on any APSN Transactions.

41. The Contract also misconstrues Defendant's true debit card processing and overdraft practices.

42. First, and most fundamentally, Defendant charges Overdraft Fees on debit card transactions for which there are sufficient funds available to cover throughout their lifecycle.



43. Defendant's practice of charging Overdraft Fees even when sufficient available funds exist to cover a transaction violates its contractual promise not to do so. This discrepancy between Defendant's actual practice and the Contract causes consumers like Plaintiff to incur more Overdraft Fees than they should.

44. Next, sufficient funds for APSN Transactions are actually debited from the account immediately, consistent with standard industry practice.

45. Because these withdrawals take place upon initiation, the funds cannot be re-debited later. But that is what Defendant does when it re-debits the account during a secret batch posting process.

46. Defendant's actual practice is to assay the same debit card transaction twice to determine if it overdraws an account—both at the time a transaction of authorization and later at the time of settlement.

47. At the time of settlement, however, an available balance does not change at all for these transactions previously authorized into positive funds. As such, Defendant cannot then charge an Overdraft Fee on that transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

48. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, Defendant releases the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debits the same transaction a second time.

49. This secret step allows Defendant to charge Overdraft Fees on transactions that never should have gotten them—transactions that were authorized into sufficient funds, and for which Defendant specifically set aside money to pay.



50. In sum, there is a huge gap between Defendant's practices as described in the Contract and Defendant's actual practices.

51. Banks and credit unions like Defendant that employ this abusive practice require their accountholders to expressly agree to it—something Defendant here never did.

52. Indeed, recognizing the complexity of the settlement process for APSN Transactions and the fact that a fee in such circumstances is counterintuitive to accountholders, other banks and credit unions require their accountholders to agree to be assessed Overdraft Fees on APSN Transactions.

53. Defendant and its accountholders make no such agreement. The Contract thus misleads and deceives account holders.

**iii. Reasonable Consumers Understand Debit Card Transactions Are Debited Immediately**

54. Defendant's assessment of Overdraft Fees on transactions that have not overdrawn an account is inconsistent with immediate withdrawal of funds for debit card transactions. This is because if funds are immediately debited, they cannot be depleted by intervening, subsequent transactions. If funds are immediately debited, they are necessarily applied to the debit card transactions for which they are debited.

55. Defendant was and is aware that this is precisely how its accountholders reasonably understand debit card transactions work.

56. Defendant knows that consumers prefer debit cards for these very reasons. Consumer research shows that consumers prefer debit cards as budgeting devices because they don't allow debt like credit cards as the money comes directly out of the checking account.

57. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is



no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of ‘float’ time that a check usually takes to clear.” *What Do I Need To Know About Using A Debit Card?*, ConsumerAction (Jan. 14, 2019), <https://bit.ly/3v5YL62>.

58. This understanding is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have viewed debit cards (along with credit cards) “as a more convenient option than refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch (Mar. 23, 2016), <https://on.mktw.net/3kV2zCH>.

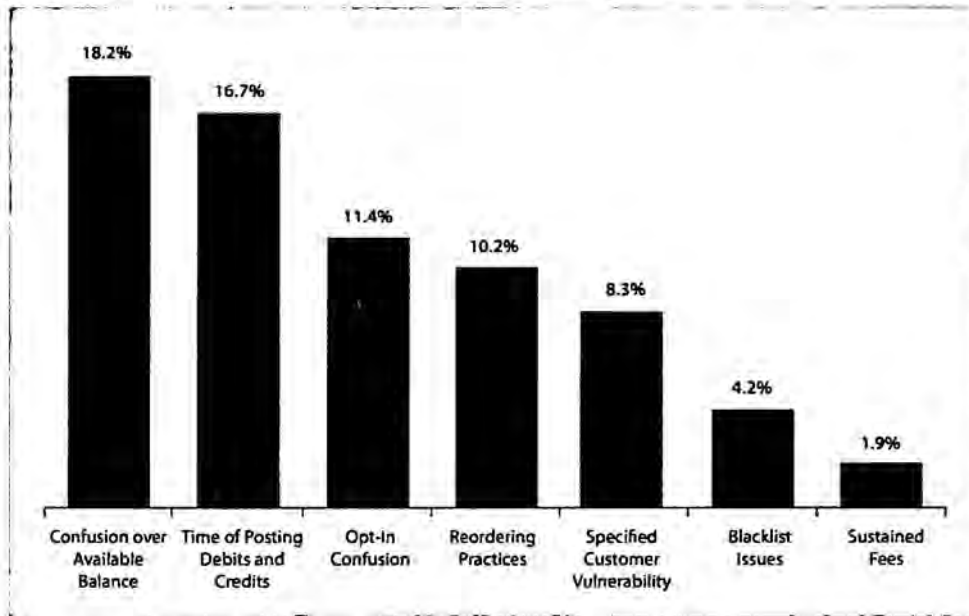
59. Not only have consumers increasingly substituted debit cards for cash, but they believe that a debit card purchase is the functional equivalent to a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

60. Accordingly, “[o]ne of the most salient themes [in complaints to the CFPB] . . . is the difficulty avoiding overdrafts even when consumers believed they would. Often, this was related to bank practices that make it difficult for consumers to know balance availability, transaction timing, or whether or not overdraft transactions would be paid or declined.” Rebecca Borne et al., *Broken Banking: How Overdraft Fees Harm Consumers and Discourage Responsible Bank Products*, Center for Responsible Lending 8 (May 2016), <https://bit.ly/3v7SvL1>.



61. In fact, consumers' leading complaints involved extensive confusion over the available balance and the time of posting debits and credits:

Figure 3: Top Overdraft Consumer Complaint Issues, by Percentage of Total Complaints



*Id.*

62. Consumers are particularly confused by financial institutions' fee practices when "based on their actual review of their available balance, often including any 'pending' transactions, [customers] believed funds were available for transactions they made, but they later learned the transactions had triggered overdraft fees." *Id.* at 9.

63. Ultimately, unclear and misleading fee representations like those in Defendant's account documents mean that consumers like Plaintiff "who are carefully trying to avoid overdraft, and often believe they will avoid it . . . end up being hit by fees nonetheless." *Id.*

64. The Federal Deposit Insurance Corporation ("FDIC") has specifically noted that financial institutions may effectively mitigate this wide-spread confusion regarding overdraft practices by "ensuring that any transaction authorized against a positive available balance does not incur an overdraft fee, even if the transaction later settles against a negative available balance."

*Consumer Compliance Supervisory Highlights*, FDIC 3 (June 2019), <https://bit.ly/3t2ybsY>.





65. Despite this recommendation, Defendant continues to assess Overdraft Fees on transactions that are authorized on sufficient funds.

66. Defendant was aware of the consumer perception that debit card transactions reduce an account balance at a specified time—namely, the time and order the transactions are actually initiated—and the Contract only supports this perception.

67. Defendant was also aware of consumers' confusion regarding Overdraft Fees but nevertheless failed to make its customers agree to these practices.

**iv. Plaintiff Was Assessed an Overdraft Fee on Debit Card Transactions Previously Authorized on Sufficient Funds**

68. On January 18, 2022, May 6, 2022 and September 19, 2022, Plaintiff was assessed Overdraft Fees on transactions previously authorized on sufficient funds.

69. Because Defendant had previously held the funds to cover these transactions, Plaintiff's account always had sufficient funds to "cover" the transactions and should not have been assessed these fees.

70. The improper fees charged by Defendant were also not errors by Defendant, but rather were intentional charges made by Defendant as part of its standard processing of transactions.

71. Plaintiff therefore had no duty to report the fees as errors because they were not errors, but were part of the systematic and intentional assessment of fees according to Defendant standard practices.

72. Moreover, any such reporting would have been futile as Defendant's own contract admits that Defendant made a decision to charge the fees.

## CLASS ALLEGATIONS

73. Plaintiff brings this action individually and as a class action on behalf of the following proposed Class:

All Kentucky citizens who, during the applicable statute of limitations, were Defendant checking account holders and were assessed an overdraft fee on a debit card transaction that was authorized on sufficient funds and settled on negative funds in the same amount for which the debit card transaction was authorized.

Plaintiff reserves the right to modify or amend the definition of the Class as this litigation proceeds.

74. Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

75. The time period for the Class is the number of years immediately preceding the date on which this Complaint was filed as allowed by the applicable statute of limitations, going forward into the future until such time as Defendant remedies the conduct complained of herein.

76. The members of the Class are so numerous that joinder is impractical. The Class consist of thousands of members, the identities of whom are within the exclusive knowledge of Defendant and can be readily ascertained only by resort to Defendant's records.

77. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, like all members of the Class, was charged improper fees as set forth herein. The representative Plaintiff, like all members of the Class, has been damaged by Defendant's misconduct. Furthermore, the factual basis of Defendant's misconduct is common to all members of the Class and represents a common thread of unlawful and unauthorized conduct resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other members of the Class.



78. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual members of the Class.

79. Among the questions of law and fact common to the Class include:

- a. Whether Defendant charged OD Fees on APSN Transactions;
- b. Whether this fee practice breached the Contract and Defendant's duty of good faith and fair dealing;
- c. Whether Defendant was unjustly enriched by this practice;
- d. Whether Defendant violated the KCPA;
- e. The proper method or methods by which to measure damages; and
- f. The declaratory and injunctive relief to which the Class are entitled.

80. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions, particularly on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

81. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual class member's claim is small relative to the complexity of the litigation, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Defendant's misconduct will proceed without remedy.

82. Even if class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a

class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

83. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all Class members, is at risk of additional improper fees. Plaintiff and the Class members are entitled to injunctive and declaratory relief as a result of the conduct complained of herein. Money damages alone could not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant from continuing to commit its unfair and illegal actions.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract, Including Breach of the Duty of Good Faith and Fair Dealing**  
*(On Behalf of Plaintiff and the Class)*

84. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

85. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's account documents. *See* Exs. A.

86. All contracts entered by Plaintiff and the Class are identical or substantively identical because Defendant's form contracts were used uniformly.

87. Defendant has breached the express terms of its own agreements as described herein.

88. Knetucky imposes a duty of good faith and fair dealing on contracts between banks and their customers because banks are inherently in a superior position to their checking account holders because, from a superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.





89. Defendant abuses its discretion in its own favor—and to the prejudice of Plaintiff and other customers—by charging OD Fees on APSN Transactions. This is an abuse of the power that Defendant has over Plaintiff and her bank account, is contrary to Plaintiff's reasonable expectations under the Contract, and breaches Defendant's implied covenant to engage in fair dealing and to act in good faith.

90. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

91. Defendant has breached the covenant of good faith and fair dealing in the contract through its policies and practices as alleged herein.

92. Defendant harms Plaintiff and members of the Class by abusing its contractual discretion that no reasonable customer would anticipate.

93. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the Contract.

94. Plaintiff and members of the Class have sustained damages because of Defendant's breach of the Contract.

95. Plaintiff and members of the Class have sustained damages because of Defendant's breach of the covenant of good faith and fair dealing.



**SECOND CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On Behalf of Plaintiff and the Class)**

96. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

97. Plaintiff and members of the Class conferred a benefit on Defendant at the expense of Plaintiff and members of the Class when they paid improper OD Fees.

98. There was an appreciation of this benefit by Defendant in the form of the substantial revenue that Defendant generates from the imposition of such fees.

99. Defendant has inequitably accepted such improper fees without payment to Plaintiff and members of the Class for their value.

100. Defendant should not be allowed to profit or enrich itself inequitably at the Plaintiff' and the Class' expense and should be required to make restitution to Plaintiff and the Class.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300)**  
**(On Behalf of Plaintiff and the Class)**

101. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

102. The Commonwealth of Kentucky believes that “the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services.” KRS § 367.120(1).



103. In furtherance of this public policy objective, the Kentucky Consumer Protection Act (the “KCPA”) was enacted in order to prevent “unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce.” KRS § 367.170(1).

104. Defendant is engaged in trade or commerce as defined in the KCPA because it offered and continues to offer its bank account deposit, checking, and debit card services to the people of Kentucky, including Plaintiff and members of the Class.

105. Plaintiff has standing to bring this action under KRS § 367.220 because they entered into a contract with Defendant for the purchase of its bank account deposit, checking and debit card services primarily for personal, family or household purposes.

106. “Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce” are unlawful pursuant to the KCPA. KRS § 367.170(1).

107. Defendant engaged in unfair, false, misleading, or deceptive acts or practices or otherwise violated KCPA by, among other things, knowingly and intentionally employing a policy and practice of charging improper fees.

108. Defendant’s conduct caused Plaintiff and the members of the Class to suffer ascertainable losses in the form of improper fees that, but for Defendant’s unfair, false, misleading, or deceptive practices and policies described herein, would not have otherwise been imposed.

109. Plaintiff and Class members are entitled to damages, declaratory relief, injunctive relief, and attorneys’ fees and costs. KRS § 367.220.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff and members of the Class demand a jury trial on all claims so triable and judgment as follows:

- a. Certification for this matter to proceed as a class action;



- b. Declaratory and injunctive relief to the extent Defendant is in breach of its contract;
- c. Designation of Plaintiff as the Class Representative and designation of the undersigned as Class Counsel;
- d. Restitution of all improper fees paid to Defendant by Plaintiff and the Class because of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual damages in amount according to proof;
- f. Pre- and post-judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- h. Such other relief as the Court deems just and proper.

### JURY DEMAND

Plaintiff, by counsel, demands trial by jury.

Dated: May 3, 2023

By: /s/ Andrew Mize

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*\*Pro hac vice applications forthcoming*

*Attorneys for Plaintiff and the Putative Class*



## What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

### ➤ What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

### ➤ What fees will I be charged if [Institution Name] pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

### ➤ What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

-----  
☐ I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

☐ I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

[Account Number]: \_\_\_\_\_ ]



**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES  
TO DEFENDANT LIMESTONE BANK**

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 33.01, Plaintiff submits the following First Set of Interrogatories to Defendant and requests that Defendant answer and respond in writing thereto within 45 days of the service hereof and under oath as is required.

**DEFINITIONS**

As used herein, the following terms have the following meanings:

1. "Communication" means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. "Defendant" or "You" means Limestone Bank, Inc., and includes any and all predecessors or successors in interest, local, regional, national, and/or executive offices, divisions,



or affiliates (foreign and domestic), segments, or divisions thereof, any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, e-mails, text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body,

including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.

### **RELEVANT TIME PERIOD**

All requests herein refer to the period from June 1, 2006 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify all persons who have knowledge of the facts or circumstances regarding the subject matter of this lawsuit and, for each such person, describe the facts known to that person and identify all documents relating to those facts. Such persons should include but not be limited to all persons (a) who have knowledge of facts you will use in opposing a motion for class certification; (b) who have knowledge of the policies, practices, and procedures you employed concerning the manner or sequence in which your customers’ transactions were or are authorized or posted to their accounts; and (c) who have knowledge of the policies, practices, and procedures Limestone Bank employed concerning Overdraft Fees and NSF Fees.

#### **RESPONSE:**

#### **INTERROGATORY NO. 2:**

Identify each Overdraft Fee Limestone Bank assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the Overdraft Fee and state all facts that show the basis on which the account was deemed to have been subject to an Overdraft Fee.

For each item identified, also state:

- (a) the date and time Limestone Bank authorized the item;





- (b) the date and time Limestone Bank received the item;
- (c) the amount of available funds in the account being debited at the time the transaction was initiated and the manner in which Limestone Bank determined available funds;
- (d) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the manner in which you determined available funds;
- (e) the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds;
- (f) the date and time the item was debited from the account;
- (g) the amount by which the transaction overdrew the account; and
- (h) the date and time Limestone Bank received payment for an Overdraft Fee.

**RESPONSE:**

**INTERROGATORY NO. 3:**

Identify each NSF Fee Limestone Bank assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the NSF Fee and state all facts that show the basis on which the account was deemed to have been subject to an NSF Fee. For each item identified, also state:

- (a) Customer account number;
- (b) Posting date;
- (c) Transaction amount;

- (d) Transaction code;
- (e) Retry or repeat transaction indicator;
- (f) Transaction category;
- (g) The date and/or time an NSF Fee was charged to the account based on the transaction;
- (h) Fee amount;
- (i) Merchant name; and
- (j) Transaction description field.

**RESPONSE:**

**INTERROGATORY NO. 4:**

Describe with particularity all policies, practices or procedures Limestone Bank used, at any time during the Relevant Time Period, to determine the manner in which items are posted to customers' accounts, including, but not limited to, Limestone Bank's policies, practices or procedures to charge Limestone Bank customers Overdraft Fees, including Overdraft Fees on transactions authorized with sufficient available funds at the time of authorization. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedure.

**RESPONSE:**

**INTERROGATORY NO. 5:**

Describe with particularity all policies, practices, or procedures Limestone Bank used to



charge customers NSF Fees, including NSF Fees on items for which NSF Fees had already been assessed one or more times. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedures used during the Relevant Time Period.

**RESPONSE:**

**INTERROGATORY NO. 6:**

Identify all persons with knowledge of Limestone Bank's decisions concerning the creation, adoption, implementation, or proposal of any changes to each policy, practice, and procedure described in Interrogatories 4 and 5 above.

**RESPONSE:**

**INTERROGATORY NO. 7:**

If any policy, practice or procedure described in Interrogatories 4 and 5 above changed or if a change was considered but not adopted or implemented, explain in detail who was involved in considering, deciding to adopt, or implementing the change; when the change was made or considered; how the change was implemented internally and how Limestone Bank customers were notified; why Limestone Bank changed or considered changing the policy, practice, or procedure; and why Limestone Bank opted not to adopt or implement the proposed change, and identify all documents concerning the change.

**RESPONSE:**

**INTERROGATORY NO. 8:**

Explain in detail all actions Limestone Bank has taken to disclose or inform its account



holders of its policies, practices, and procedures concerning Overdraft Fees, NSF Fees, and how account holders can check their available balance on their checking account.

**RESPONSE:**

**INTERROGATORY NO. 9:**

On an annual basis for each year during the Relevant Time Period, state:

- (a) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions you assessed against your customers' accounts;
- (b) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions assessed against customers' accounts that you have forgiven, waived, reversed or otherwise not collected;
- (c) the number of your customers' accounts that have been assessed Overdraft Fees on electronic transactions initially authorized into a positive available balance;
- (d) Limestone Bank's total gross revenues from consumer banking operations;
- (e) Limestone Bank's total service fees on deposits;
- (f) the aggregate total dollar amount of NSF Fees assessed against Limestone Bank customers; and
- (g) the aggregate total dollar amount of NSF Fees assessed against Limestone Bank customers for "retry payments."

**RESPONSE:**

**INTERROGATORY NO. 10:**

Explain in detail how Limestone Bank determines whether to authorize a debit transaction





made on a customer's account. In the event an automated algorithm is used, describe in detail each factor considered by the algorithm and the weight ascribed to each such factor.

**RESPONSE:**

**INTERROGATORY NO. 11:**

Identify and describe the policy or procedures by which you have processed and posted or currently process and post pending items to your customers' checking accounts when calculating and displaying the balances of their checking accounts to your customers, the reason(s) for such policy or procedures, and whether such policy or procedures applied to all deposit accounts.

**RESPONSE:**

**INTERROGATORY NO. 12:**

Explain in detail the order in which you list items on your customers' account statements, your reason(s) for listing them in that order, and whether such ordering applied to all deposit accounts.

**RESPONSE:**

**INTERROGATORY NO. 13:**

Explain in detail the current and former policy or procedure by which Limestone Bank's internet or mobile banking service or application displays pending items to Limestone Bank customers' checking accounts and posted items to Limestone Bank customers' checking accounts.

**RESPONSE:**

**INTERROGATORY NO. 14:**

Identify and describe any documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning Limestone Bank's Overdraft or NSF Fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue projections.

**RESPONSE:**

Dated: May 3, 2023

By: /s/ Andrew Mize

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*Attorneys for Plaintiff and the Putative Class*

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**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION  
TO DEFENDANT LIMESTONE BANK**

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 34.01, Plaintiff submits the following First Set of Requests for Production to Defendant and requests that Defendant produce the Documents and things described herein for inspection and copying within 45 days.

**DEFINITIONS**

As used herein the following terms have the following meanings:

1. "Communication" means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. "Defendant" or "You" means Limestone Bank, Inc., and includes any and all





predecessors or successors in interest, local, regional, national, and/or executive offices, divisions, or affiliates (foreign and domestic), segments, or divisions thereof, any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, electronic-mails (“e-mails”), text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not

be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body, including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.

### **RELEVANT TIME PERIOD**

All requests herein refer to the period from May 1, 2008 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce all Documents that concern any account of any type associated with Plaintiff, whether presently open or closed, including, but not limited to, any and all communications between Defendant and Plaintiff, and Documents sufficient to show all account activity in any such account.

#### **RESPONSE:**

#### **REQUEST FOR PRODUCTION NO. 2:**

Produce the account contract(s), disclosures, and all related Documents that Defendant contends govern any aspect of Plaintiff’s relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

#### **RESPONSE:**





**REQUEST FOR PRODUCTION NO. 3:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against an account held by Plaintiff, produce all Documents reflecting:

- (a) the date and time the transaction was initiated, authorized, and when you first received notice of the dollar amount of the transaction;
- (b) the amount of available funds in the account being debited at the time the transaction was initiated and the way you determined available funds;
- (c) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the way you determined available funds;
- (d) the amount of available funds in the account being debited at the time the transaction was authorized and the way you determined available funds;
- (e) the amount by which the transaction overdrew the account;
- (f) the date and time the Overdraft Fee was deducted from the account based on the transaction; and
- (g) the date and time Defendant received payment for the Overdraft Fee.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 4:**

Produce all Documents concerning the specific criteria and dollar amounts upon which Defendant determined whether or not transactions would be authorized where such authorization would cause an overdraft, including, but not limited to: the ledger balance in the account, the available balance, the collected balance in the account, the historical frequency of overdrafts, the

historical total of overdrafts and Overdraft Fees, the dollar amount of the particular charge, the dollar amount per day, the consistency of deposits, and/or the existence of other accounts at Defendant.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 5:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to charge Defendant customers Overdraft Fees, including on transactions authorized with sufficient available funds at the time of authorization and Overdraft Fees caused as a result of the deduction of other Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 6:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to deduct Overdraft Fees from accounts immediately and prior to the availability of sufficient funds to pay them.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 7:**

Produce all Documents concerning all methods by which Defendant customers can obtain information on the available balance of their checking accounts.

**RESPONSE:**





**REQUEST FOR PRODUCTION NO. 8:**

Produce the account contracts and/or disclosures and all related Documents that Defendant contends govern any aspect of a checking account customer's relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 9:**

Produce all Documents that Defendant has provided to Defendant customers reflecting a schedule of fees, including, but not limited to, Overdraft Fees, for services. Include all notices or messages sent to Defendant customers regarding any revision or modification of such schedule of fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 10:**

Produce organizational charts sufficient to show the names, titles and positions of all Persons, departments, entities, divisions, subdivisions, affiliates, subsidiaries, agents and other Persons and entities that provide checking account and overdraft fee services to Defendant's customers, including, but not limited to, all Persons and entities involved in determining or assessing fees, operating your Hogan or RTS (or equivalent) system, or operating any debit card processing systems, and all Persons and entities with responsibilities pertaining to the storage and retention of written and electronic records related thereto.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 11:**

Produce exemplar copies of all advertisements and other marketing materials utilized by Defendant to promote Defendant checking accounts and overdraft services.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 12:**

Produce all Documents that refer or relate to market research, surveys, studies, analysis, and/or other consumer research or surveys conducted on the topic of debit cards or Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 13:**

Produce exemplar screen-by-screen depictions of the Defendant online or mobile banking interface displaying the appearance of authorized or pending transactions before and after they are posted to an account.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 14:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against a checking account, produce all Documents concerning the following data elements: customer account number; posting date; transaction amount; transaction code; available balance at the time of posting; ledger balance at the time of posting; recurring payment indicator; problem item indicator; negative authorization indicator; transaction category or type; the date and/or time an



Overdraft Fee was charged to the account based on the transaction; Overdraft Fee amount; the date and time the transaction was authorized; the amount authorized; and the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 15:**

For each transaction representing a refund of an Overdraft Fee credited to a checking account, produce all Documents concerning the customer account number; posting date; transaction amount; and transaction code.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 16:**

Produce all consumer complaints regarding the practices challenged in Plaintiff's complaint and all communications regarding the same.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 17:**

Produce all Documents that refer or relate to all methods by which Defendant customers can obtain information regarding resubmission of electronic payments through the ACH system.

**RESPONSE:**



**REQUEST FOR PRODUCTION NO. 18:**

Produce Documents, including a general ledger, sufficient to reflect your quarterly and annual revenue, margins, and net income during the Relevant Time Period, including, without limitation, your revenue, margins and net income from fees and other non-interest charges, including, without limitation, your revenue, margins and net income from Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 19:**

Produce all Documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning Defendant fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue projections.

**RESPONSE:**

Dated: May 3, 2023

By: /s/ Andrew Mize  
 Andrew Mize (Ky. Bar No. 94453)  
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*Attorneys for Plaintiff and the Putative Class*

Case No. 23-CI-002712

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

PLAINTIFF

v.

**ORDER**

LIMESTONE BANK, INC.,

DEFENDANT

\* \* \* \* \*

Defendant Limestone Bank, Inc., having made its Motion, and the Court being otherwise  
sufficiently advised;

**IT IS HEREBY ORDERED AND ADJUDGED** that Limestone Bank, Inc.'s Motion to  
Dismiss Plaintiff's Complaint is hereby **GRANTED**. All claims asserted by Plaintiff against  
Limestone Bank, Inc. are dismissed with prejudice.

**SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

There being no just cause for delay, this is a final and appealable order.

---

JUDGE, JEFFERSON CIRCUIT COURT

Tendered By:

/s/ C. Anne Stewart

Joseph N. Tucker

C. Anne Stewart

DINSMORE & SHOHL LLP

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*Counsel for Defendant Limestone Bank, Inc.*

Case No. 23-CI-002712

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRYROBIN COOPER, individually and on behalf of  
all others similarly situated,

PLAINTIFF

v. **AMENDED CLASS ACTION COMPLAINT**

PEOPLES BANK,

DEFENDANT

\* \* \* \* \*

Plaintiff, Robin Cooper, individually and on behalf of the class of persons preliminarily defined below (the “Class”), makes the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

### NATURE OF THE ACTION

1. This is a civil action seeking monetary damages, restitution, and declaratory relief from Defendant Peoples Bank as successor of Limestone Bank (“Defendant”), arising from Limestone Bank’s improper assessment and collection of \$35 overdraft fees (“OD Fees”) on debit card transactions that were authorized on sufficient funds.

2. Besides being deceptive, these practices breached contract promises made in Limestone Bank’s adhesion contracts which, upon information and belief, include the Overdraft Opt-In Form attached hereto as Exhibit A (the “Contract”).<sup>1</sup>

3. Plaintiff and other Limestone Bank customers have been injured by Limestone Bank’s practices. Plaintiff, individually and on behalf of the class of individuals preliminarily

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<sup>1</sup> Pursuant to federal regulation, Limestone Bank was required to obtain its members’ affirmative consent or “opt-in” to Limestone Bank’s payment of one-time debit card transactions using a form that “shall be substantially similar to [the] Model Form” attached hereto as Ex. A. 12 C.F.R. § 1005.17(b)(iii), (d). Despite a good faith search, Plaintiff was unable to obtain a copy of the opt-in form Limestone Bank actually used prior to its merger into Peoples Bank.



defined below, bring claims for breach of contract, including the duty of good faith and fair dealing, unjust enrichment, violations of the Electronic Fund Transfers Act (Regulation E) C.F.R. § 1005 *et seq.* (authority derived from 15 U.S.C. § 1693 *et seq.*) and violations of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300) (the “KCPA”).

### **PARTIES**

4. Plaintiff is an individual and citizen of Kentucky, and a resident of Daviess County, and had a checking account with Limestone Bank at all times material hereto.

5. Limestone Bank was a Kentucky banking corporation based in Louisville, Jefferson County, Kentucky. In April 2023, Limestone Bank merged into Peoples Bank, was dissolved, and ceased to exist. Peoples Bank thus acquired Limestone Bank’s assets and liabilities.<sup>2</sup>

6. Peoples Bank is a for profit corporation with nearly \$7.3 billion in assets. Peoples Bank is headquartered in Marietta, Washington County, Ohio and maintains more than 130 full-service branches throughout Kentucky, Ohio, West Virginia, Virginia, Maryland, and Washington D.C.

### **JURISDICTION AND VENUE**

7. Defendant regularly and systematically conducts business and provides retail banking services in this state and provides retail banking services to customers in this state, including Plaintiff and members of the putative Class. As such, it is subject to the jurisdiction of this Court.

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<sup>2</sup> Pursuant to Limestone Bank and Peoples Bank’s merger agreement, “[a]ll rights of creditors and all liens of Limestone Bank shall be preserved unimpaired, and all debts, liabilities and duties of Limestone Bank shall at the Effective Time become obligations of the Surviving Bank and may be enforced against it to the same extent as if such debts, liabilities and duties had been incurred or contracted by it.”

8. Pursuant to CR 8.01, the amount in controversy exceeds the minimum jurisdiction of the Jefferson Circuit Court.

9. Venue is likewise proper in this county pursuant to KRS § 452.450 because Limestone Bank maintained its principal office in this County and the parties' contract was made or to be performed in this County.

### **BACKGROUND FACTS**

10. In 2021, the largest financial institutions in America charged customers almost \$11 billion in overdraft fees. Customers who carried an average balance of less than \$350 paid 84 percent of these fees. *Why Poverty Persists in America* (The New York Times, Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html>.

11. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo, Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. *See* Hugh Son, *Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check Fees*, CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>.

12. In line with this industry trend, the New York Attorney General recently asked other industry leading banks to end the assessment of all OD Fees by the summer of 2022. *NY Attorney General asks banks to end overdraft fees*, Elizabeth Dilts Marshall, Reuters (April 6, 2022).

13. Through the imposition of these fees, Defendant has made substantial revenue to the tune of tens of millions of dollars, seeking to turn its customers' financial struggles into revenue.

**I. DEFENDANT ASSESSES OD FEES ON DEBIT CARD TRANSACTIONS THAT WERE AUTHORIZED ON SUFFICIENT FUNDS.**

14. Plaintiff brings this action challenging Limestone Bank's practice of charging OD Fees on what are referred to in this complaint as "Authorize Positive, Settle Negative Transactions," or "APSN Transactions."

15. Limestone Bank's practice was as follows: the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Limestone Bank immediately reduces consumers' checking accounts for the amount of the purchase, sets aside funds in the checking account to cover that transaction, and adjusts the consumer's displayed "available balance" to reflect that subtracted amount. As a result, customers' accounts always had sufficient funds available to cover these transactions because Limestone Bank already held the funds for payment.

16. However, Limestone Bank still assessed crippling OD Fees on many of these transactions and misrepresented its practices in the Contract.

17. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Limestone Bank later assesses OD Fees on those same transactions when they settle days later into a negative balance. These types of transactions are APSN Transactions.

18. Limestone Bank maintained a running account balance, tracking funds consumers have for immediate use. This running account balance was adjusted, in real-time, to account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Limestone Bank held the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds were not

available for any other use by the account holder and were specifically reserved for a given debit card transaction.

19. Indeed, the entire purpose of the immediate debit and hold of positive funds was to ensure that there were enough funds in the account to pay the transaction when it settled:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a "debit hold." During the time the debit hold remains in place, which may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498 (Jan. 29, 2009).

20. That means when any subsequent, intervening transactions were initiated on a checking account, they were compared against an account balance that had already been reduced to account for pending debit card transactions. Therefore, many subsequent transactions incurred OD Fees due to the unavailability of the funds held for earlier debit card transactions.

21. Still, despite always reserving sufficient available funds to cover the transactions and keeping the held funds off-limits for other transactions, Limestone Bank improperly charged OD Fees on APSN Transactions.

22. The Consumer Financial Protection Bureau ("CFPB") has expressed concern with this very issue, flatly calling the practice "unfair" and/or "deceptive" when:

[A] financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately



disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.

At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer's available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, "Supervisory Highlights" (Winter 2015).

23. There was no justification for this practice, other than to maximize Limestone Bank's OD Fee revenue. APSN Transactions only exist because intervening transactions supposedly reduce an account balance. But Limestone Bank was free to protect its interests and either reject those intervening transactions or charge OD Fees on those intervening transactions—and it did the latter to the tune of millions of dollars each year.

24. But Limestone Bank was not content with these millions in OD Fees. Instead, it sought millions more in OD Fees on APSN Transactions.

25. Besides being deceptive, this practice breached contract promises made in Limestone Bank's adhesion contracts, which fundamentally misconstrued and misled consumers about the true nature of Limestone Bank's processes and practices. Limestone Bank also exploited its contractual discretion by implementing the practices to gouge its customers.

26. Federal regulators have repeatedly condemned OD Fees on APSN Transactions

where, like here, the financial institution and its customers did not expressly and unambiguously agree to them.

27. For example, the Consumer Financial Protection Bureau (“CFPB”) ordered Regions Bank to pay \$141 million to reimburse consumers for OD Fees on debit card transactions authorized on sufficient funds, noting such fees result from “counter-intuitive, complex processes” and finding them to be “unfair” and “abusive” in violation of federal law. Consent Order, *In the Matter of: Regions Bank*, No. 2022-CFPB-0008 ¶¶ 4, 32, 34, 38 (Sept. 28, 2022) (Dkt. 1), <https://bit.ly/3vGDdyx>.

28. In October 2022, the CFPB again declared that the assessment of OD Fees on debit card transactions authorized on sufficient funds may constitute an “unfair act or practice” because consumers cannot reasonably avoid these “unanticipated” OD Fees. *See Circular 2022-06, Unanticipated Overdraft Fee Practices*, CONS. FIN. PROTECTION BUREAU (Oct. 26, 2022), <https://bit.ly/3VJm3uB>.

29. In December 2022, the CFPB ordered Wells Fargo Bank, N.A. to refund \$205 million in such “Authorized-Positive Overdraft Fees” and again declared such practice to be “unfair, deceptive, or abusive” in violation of federal law. Consent Order, *In the Matter of: Wells Fargo Bank, N.A.*, No. 2022-CFPB-0011 ¶¶ 47, 60 (Dec. 20, 2022) (Dkt. 1), <https://bit.ly/3ZdnwMM>. The CFPB reasoned that “[c]onsumers may be taken by surprise when they incur Authorized-Positive Overdraft Fees because they believed that if they had enough money to cover the relevant transaction when it was authorized they would not incur an Overdraft fee. These Authorized-Positive Overdraft Fees were not reasonable avoidable because they were contrary to consumers’ reasonable expectations.” *Id.* at ¶ 44.

30. And in its Winter 2023 Supervisory Highlights, the CFPB again stated this APSN

practice is “unfair,” as “[c]onsumers could not reasonably avoid the substantial injury, irrespective of account-opening disclosures.” *Supervisory Highlights Junk Fees Special Edition*, CONS. FIN. PROTECTION BUREAU 4 (Winter 2023), <https://tinyurl.com/3ste5dfr>. The CFPB explained that “[w]hile work is ongoing, at this early stage Supervision has already identified at least tens of millions of dollars of consumer injury and in response to these examination findings, institutions are providing redress to over 170,000 consumers” and indicated the CFPB intends to continue pursuing such “legal violations surrounding APSN overdraft fees both generally and in the context of specific public enforcement actions[, which] will result in hundreds of millions of dollars of redress to consumers.” *Id.*

31. The Federal Reserve has likewise found that OD Fees on debit card transactions authorized on sufficient funds is an “unfair or deceptive” in violation of federal law and advised financial institutions to “[r]efrain from assessing unfair overdraft fees on POS transactions when they post to consumers’ accounts with insufficient available funds after having authorized those transactions based on sufficient available funds.” *Consumer Compliance Supervision Bulletin: Highlights of Current Issues in Federal Reserve Board Consumer Compliance Supervision*, FED. RESERVE BD. 12, 13 (July 2018), <https://tinyurl.com/44dvnd65>.

32. On April 26, 2023, the Office of the Comptroller of the Currency (“OCC”) joined the chorus of regulators, issuing a bulletin to banks addressing the risks associated with overdraft protection programs. The OCC addressed APSN practices as follows:

Some banks assess overdraft fees on debit card transactions that authorize when a customer’s available balance is positive but that later post to the account when the available balance is negative.

In this scenario, a customer’s account has a sufficient available balance to cover a debit card transaction when the transaction is authorized but, due to one or more intervening transactions, has an insufficient available balance to cover the transaction at the time it settles. This is commonly referred to as an APSN transaction. In addition to assessing an overdraft fee on the APSN transaction, some

banks also assess an overdraft fee on intervening transactions that exceed the customer's available balance. In this scenario, for example, the bank reduces a customer's available balance by an amount that is more than, equal to, or less than the initial authorized debit card transaction, and subsequently, an intervening transaction further reduces the customer's available balance so that the account no longer has a sufficient available balance. The bank charges an overdraft fee on both the intervening transaction and the initial APSN transaction when posted to the customer's account.

The OCC has reviewed a number of overdraft protection programs that assess overdraft fees on APSN transactions. In some instances, the OCC has found account materials to be deceptive, for purposes of Section 5, with respect to the banks' overdraft fee practices. In these instances, misleading disclosures contributed to findings that the APSN practice was also unfair for purposes of Section 5. In addition, and based on subsequent analysis, even when disclosures described the circumstances under which consumers may incur overdraft fees, the OCC has found that overdraft fees charged for APSN transactions are unfair for purposes of Section 5 because consumers were still unlikely to be able to reasonably avoid injury and the facts met the other factors for establishing unfairness.

*OCC Bulletin 2023-12: Overdraft Protection Programs: Risk Management Practices*, OFFICE OF COMPTROLLER OF THE CURRENCY (Apr. 26, 2023), <https://tinyurl.com/mt63pfnb> (footnotes omitted).

#### **A. Mechanics of a Debit Card Transaction**

33. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from the financial institution. When a customer physically or virtually "swipes" their debit card, the credit card terminal connects via an intermediary to Limestone Bank, which verified that the customer's account is valid and that sufficient available funds exist to cover the transaction amount.

34. At this step, if the transaction was approved, Limestone Bank immediately decremented the funds in a consumer's account and holds funds in the amount of the transaction but does not yet transfer the funds to the merchant.

35. Sometime thereafter, the funds are actually transferred from the customer's account to the merchant's account.



36. Limestone Bank (like all banks and credit unions) decided whether to “pay” debit card transactions at authorization. For debit card transactions, that moment of decision could only occur at the point of sale, when the transaction was authorized or declined. It was at that point—and only that point—that Limestone Bank could choose to either pay the transaction or to decline it. When the time came to actually transfer funds for the transaction to the merchant, it was too late for the bank to deny payment—the bank had no discretion and must pay the charge. This “must pay” rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it “must pay” it when the merchant later makes a demand, regardless of other account activity. *See* Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

37. There is no change—no impact whatsoever—to the available funds in an account when transfer step occurs.

#### **B. Limestone Bank’s Contract**

38. Upon information and belief, Limestone Bank promised in its Contract that “[a]n overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway.” Ex. A.

39. In breach of this promise, Limestone Bank assessed OD Fees when there was enough money in the account to cover the transaction.

40. Upon information and belief, Defendant further promised that authorization and payment occurred simultaneously and that overdrafts would be determined when Limestone Bank “authorize[d] and pa[id]” the debit card transaction:

We do ***authorize and pay*** overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not ***authorize and pay*** overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always *authorize and pay* any type of transaction.

If we do not *authorize and pay* an overdraft, your transaction will be declined.

...

What if I want [Defendant] to *authorize and pay* overdrafts on my ATM and everyday debit card transactions?

If you also want us to *authorize and pay* overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

\_\_\_ I do not want [Defendant] to *authorize and pay* overdrafts on my ATM and everyday debit card transactions.

\_\_\_ I want [Defendant] to *authorize and pay* overdrafts on my ATM and everyday debit card transactions.

Ex. A (emphasis added).

41. This language linking payment to authorization reasonably means that transactions were paid, and therefore overdrafts were determined, at authorization.

42. For APSN Transactions, which are immediately deducted from a positive account balance and held aside for payment of that same transaction, there are always sufficient funds to cover those transactions—yet Limestone Bank assessed OD Fees on them anyway.

43. The above promises indicate that transactions are only overdraft transactions when they are authorized and approved into a negative account balance. Of course, that is not true for APSN Transactions.

44. In fact, Limestone Bank actually authorized transactions on positive funds, set those funds aside on hold, then failed to use those same funds to post those same transactions. Instead, it used a secret posting process described below.

45. All of the above representations and contractual promises are untrue. Limestone Bank charged OD Fees even when sufficient funds existed to cover transactions that were authorized into a positive balance. No express language in any document permitted Limestone Bank to impose fees on APSN Transactions.

46. The Contract also misconstrued Limestone Bank's true debit card processing and overdraft practices.

47. First, and most fundamentally, Limestone Bank charged OD Fees on debit card transactions for which there were sufficient funds available to cover throughout their lifecycle.

48. Limestone Bank's practice of charging OD Fees even when sufficient available funds existed to cover a transaction violated its contractual promise not to do so. This discrepancy between Limestone Bank's actual practice and the Contract caused consumers like Plaintiff to incur more OD Fees than they should.

49. Next, sufficient funds for APSN Transactions were actually debited from the account immediately, consistent with standard industry practice.

50. Because these withdrawals take place upon initiation, the funds cannot be re-debited later. But that is what Defendant did when it re-debited the account during a secret batch posting process.

51. Defendant's actual practice was to assay the same debit card transaction twice to determine if it overdrew an account—both at the time of authorization and later at the time of settlement.

52. At settlement, however, an available balance did not change at all for transactions previously authorized into positive funds. As such, Limestone Bank could not then charge an OD

Fee on the transactions because the available balance had not been rendered insufficient due to the pseudo-event of settlement.

53. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, Limestone Bank released the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debited the same transaction a second time.

54. This secret step allowed Limestone Bank to charge OD Fees on transactions that never should have gotten them—transactions that were authorized into sufficient funds, and for which Defendant specifically set aside money to pay.

55. In sum, there was a huge gap between Limestone Bank's practices as described in the Contract and Limestone Bank's actual practices.

56. Other banks and credit unions that employ this abusive practice require their accountholders to expressly agree to it—something Limestone Bank here never did.

57. Indeed, recognizing the complexity of the settlement process for APSN Transactions and the fact that a fee in such circumstances is counterintuitive to accountholders, other banks and credit unions require their accountholders to agree to be assessed OD Fees on APSN Transactions.

58. Limestone Bank and its accountholders made no such agreement. The Contract thus misled and deceived account holders.

**C. Reasonable Consumers Understand Debit Card Transactions Are Debited Immediately**

59. Limestone Bank's assessment of OD Fees on transactions that did not overdraw an account was inconsistent with the immediate withdrawal of funds for debit card transactions. This is because if funds are immediately debited, they cannot be depleted by intervening, subsequent



transactions. If funds are immediately debited, they are necessarily applied to the debit card transactions for which they are debited.

60. Limestone Bank was aware that this is precisely how its accountholders reasonably understand debit card transactions work.

61. Limestone Bank knew that consumers prefer debit cards for these very reasons. Consumer research shows that consumers prefer debit cards as budgeting devices because they don't allow debt like credit cards as the money comes directly out of the checking account.

62. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of 'float' time that a check usually takes to clear." *What Do I Need To Know About Using A Debit Card?*, ConsumerAction (Jan. 14, 2019), <https://bit.ly/3v5YL62>.

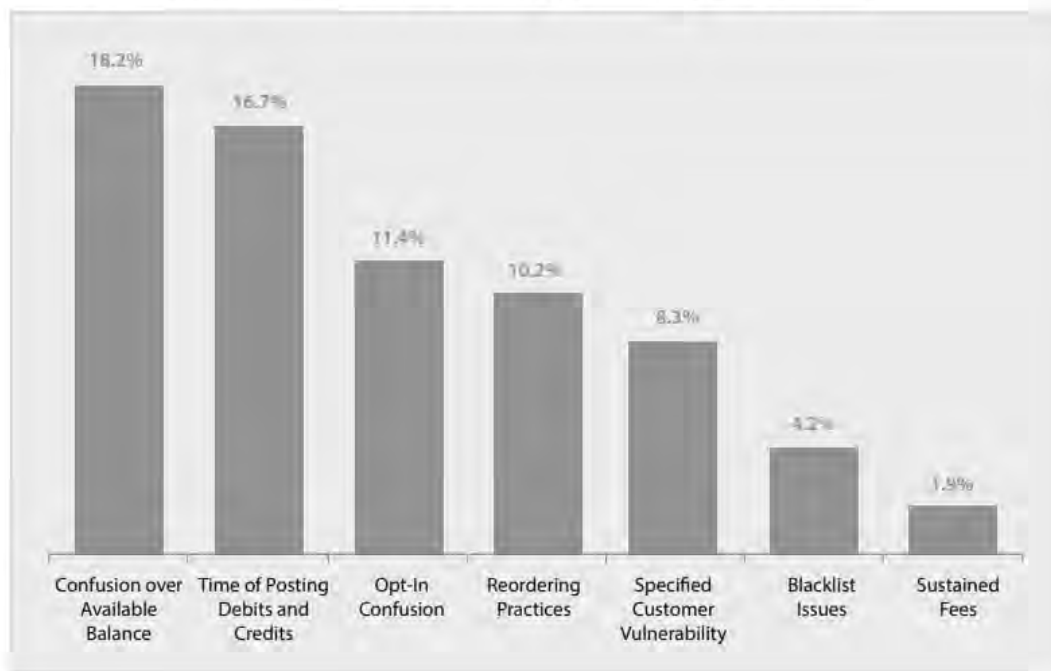
63. This understanding is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have viewed debit cards (along with credit cards) "as a more convenient option than refilling their wallets with cash from an ATM." Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch (Mar. 23, 2016), <https://on.mktw.net/3kV2zCH>.

64. Not only have consumers increasingly substituted debit cards for cash, but they believe that a debit card purchase is the functional equivalent to a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

65. Accordingly, “[o]ne of the most salient themes [in complaints to the CFPB] . . . is the difficulty avoiding overdrafts even when consumers believed they would. Often, this was related to bank practices that make it difficult for consumers to know balance availability, transaction timing, or whether or not overdraft transactions would be paid or declined.” Rebecca Borne et al., *Broken Banking: How Overdraft Fees Harm Consumers and Discourage Responsible Bank Products*, Center for Responsible Lending 8 (May 2016), <https://bit.ly/3v7SvL1>.

66. In fact, consumers’ leading complaints involved extensive confusion over the available balance and the time of posting debits and credits:

Figure 3: Top Overdraft Consumer Complaint Issues, by Percentage of Total Complaints



*Id.*

67. Consumers are particularly confused by financial institutions’ fee practices when “based on their actual review of their available balance, often including any ‘pending’ transactions, [customers] believed funds were available for transactions they made, but they later learned the transactions had triggered overdraft fees.” *Id.* at 9.

68. Ultimately, unclear and misleading fee representations like those in Limestone Bank’s account documents mean that consumers like Plaintiff “who are carefully trying to avoid overdraft, and often believe they will avoid it . . . end up being hit by fees nonetheless.” *Id.*

69. The Federal Deposit Insurance Corporation (“FDIC”) has specifically noted that financial institutions may effectively mitigate this wide-spread confusion regarding overdraft practices by “ensuring that any transaction authorized against a positive available balance does not incur an overdraft fee, even if the transaction later settles against a negative available balance.” *Consumer Compliance Supervisory Highlights*, FDIC 3 (June 2019), <https://bit.ly/3t2ybsY>.

70. Despite this recommendation, Limestone Bank continued to assess OD Fees on transactions that are authorized on sufficient funds.

71. Limestone Bank was aware of the consumer perception that debit card transactions reduce an account balance at a specified time—namely, the time the transactions were actually initiated and the funds were removed from the customer’s available balance—and the Contract only supported this perception.

72. Limestone Bank was also aware of consumers’ confusion regarding OD Fees but nevertheless failed to make its customers agree to these practices.

**D. Plaintiff Was Assessed OD Fees on Debit Card Transactions Previously Authorized on Sufficient Funds**

73. On January 18, 2022, May 6, 2022 and September 19, 2022, Plaintiff was assessed OD Fees on transactions previously authorized on sufficient funds.

74. Because Limestone Bank had previously held the funds to cover these transactions, Plaintiff’s account always had sufficient funds to “cover” the transactions and should not have been assessed these fees.

75. The improper fees charged by Limestone Bank were also not errors by Limestone Bank, but rather were intentional charges made by Limestone Bank as part of its standard processing of transactions.

76. Plaintiff therefore had no duty to report the fees as errors because they were not errors but were part of the systematic and intentional assessment of fees according to Limestone Bank's standard practices.

77. Moreover, any such reporting would have been futile as Limestone Bank intentionally structured its fee practice in this manner.

### **CLASS ALLEGATIONS**

78. Plaintiff brings this action individually and as a class action on behalf of the following proposed Class:

All Kentucky citizens who, during the applicable statute of limitations, were Limestone Bank checking account holders and were assessed an overdraft fee on a debit card transaction that was authorized on sufficient funds and settled on negative funds in the same amount for which the debit card transaction was authorized.

Plaintiff reserves the right to modify or amend the definition of the Class as this litigation proceeds.

79. Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

80. The time period for the Class is the number of years immediately preceding the date on which this Complaint was filed as allowed by the applicable statute of limitations, going forward into the future until such time as Defendant remedies the conduct complained of herein.



81. The members of the Class are so numerous that joinder is impractical. The Class consists of thousands of members, the identities of whom are within the exclusive knowledge of Defendant and can be readily ascertained only by resort to Defendant's records.

82. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, like all members of the Class, was charged improper fees as set forth herein. The representative Plaintiff, like all members of the Class, has been damaged by Limestone Bank's misconduct. Furthermore, the factual basis of Limestone Bank's misconduct is common to all members of the Class and represents a common thread of unlawful and unauthorized conduct resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other members of the Class.

83. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual members of the Class.

84. Among the questions of law and fact common to the Class include:

- a. Whether Limestone Bank charged OD Fees on APSN Transactions;
- b. Whether this fee practice breached the Contract and Limestone Bank's duty of good faith and fair dealing;
- c. Whether Limestone Bank was unjustly enriched by this practice;
- d. Whether Limestone Bank violated Regulation E and the KCPA;
- e. The proper method or methods by which to measure damages; and
- f. The declaratory and injunctive relief to which the Class are entitled.

85. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions, particularly on behalf of

consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

86. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual class member's claim is small relative to the complexity of the litigation, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Limestone Bank's misconduct will proceed without remedy.

87. Even if class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract, Including Breach of the Duty of Good Faith and Fair Dealing**  
*(On Behalf of Plaintiff and the Class)*

88. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

89. Plaintiff and Limestone Bank contracted for banking services, as embodied in Limestone Bank's account documents. *See* Ex. A.

90. All contracts entered by Plaintiff and the Class are identical or substantively identical because Limestone Bank's form contracts were used uniformly.

91. Limestone Bank has breached the express terms of its own agreements as described herein.

92. Kentucky imposes a duty of good faith and fair dealing on contracts between banks and their customers because banks are inherently in a superior position to their checking account holders because, from a superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.

93. Limestone Bank abused its discretion in its own favor—and to the prejudice of Plaintiff and other customers—by charging OD Fees on APSN Transactions. This is an abuse of the power that Limestone Bank had over Plaintiff and her bank account, was contrary to Plaintiff's reasonable expectations under the Contract, and breached Limestone Bank's implied covenant to engage in fair dealing and to act in good faith.

94. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

95. Limestone Bank breached the covenant of good faith and fair dealing in the contract through its policies and practices as alleged herein.

96. Limestone Bank harmed Plaintiff and members of the Class by abusing its contractual discretion that no reasonable customer would anticipate.

97. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the Contract.

98. Plaintiff and members of the Class have sustained damages because of Limestone Bank's breach of the Contract.

99. Plaintiff and members of the Class have sustained damages because of Limestone Bank's breach of the covenant of good faith and fair dealing.

**SECOND CLAIM FOR RELIEF**  
**Violation of Electronic Fund Transfers Act (Regulation E)**  
**C.F.R. § 1005 et seq. (authority derived from 15 U.S.C. § 1693 et seq.)**  
**(On Behalf of Plaintiff and the Class)**

100. Plaintiff incorporates by reference the preceding paragraphs.

101. By charging OD Fees on APSN Transactions, Limestone Bank violated Regulation E (12 C.F.R. §§1005 *et seq.*), whose "primary objective" is "the protection of consumers" (§1005.1(b)) and which "carries out the purposes of the [Electronic Fund Transfer Act 15 U.S.C. §1693 et seq.], the "EFTA"] (§1005. 1(b)), whose express "primary objective" is also "the provision of individual consumer rights" (15 U.S.C. §1693(b)).

102. Specifically, the charges violated what is known as the "Opt In Rule" of Regulation E. 12 C.F.R. § 1005.17. The Opt In Rule states: "a financial institution ... shall not assess a fee or charge ... pursuant to the institution's overdraft service, unless the institution: (i) [p]rovides the consumer with a notice in writing [the opt-in notice]. . . describing the institution's overdraft service" and (ii) "[p]rovides a reasonable opportunity for the consumer to affirmatively consent" to enter into the overdraft program. *Id.*

103. The notice required by Regulation E "shall be clear and readily understandable." 12 C.F.R. §205.4(a)(l).



104. To comply with the affirmative consent requirement, a financial institution must provide a segregated description of its overdraft practices that is accurate, non-misleading and truthful and that conforms to 12 C.F.R. § 1005.17 prior to the opt-in, and must provide its customers a reasonable opportunity to opt-in after receiving the description.

105. The affirmative consent must be provided in a way mandated by 12 C.F.R. § 1005.17, and the financial institution must provide confirmation of the opt-in in a manner that conforms to 12 C.F.R. § 1005.17.

106. As stated in the Official Staff Commentary, the intent and purpose of Regulation E's Opt-In Form is to "assist customers in understanding how overdraft services provided by their institutions operate . . . by explaining the institution's overdraft service . . . in a clear and readily understandable way." 74 Fed. Reg. 59033, 59035, 59037, 5940, 5948.

107. Limestone Bank failed to comply with the 12 C.F.R. § 1005.17 opt-in requirements, including failing to provide its customers with a valid description of the overdraft program which meets the strictures of 12 C.F.R. § 1005.17. Limestone Bank's opt-in method failed to satisfy 12 C.F.R. § 1005.17 because its overdraft notice misrepresented Limestone Bank's true overdraft practices, as discussed above.

108. As a result of violating Regulation E's prohibition against assessing OD Fees without obtaining affirmative consent to do so, Limestone Bank harmed Plaintiff and the Class.

109. Because of Limestone Bank's violation of Regulation E, 12 C.F.R. § 1005.17, Plaintiff and members of the Class are entitled to actual and statutory damages, as well as attorneys' fees and costs of suit pursuant to 15 U.S.C.A. § 1693m.

**THIRD CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On Behalf of Plaintiff and the Class)**

110. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

111. Plaintiff and members of the Class conferred a benefit on Limestone Bank at the expense of Plaintiff and members of the Class when they paid improper OD Fees.

112. There was an appreciation of this benefit by Limestone Bank in the form of the substantial revenue that Limestone Bank generated from the imposition of such fees.

113. Limestone Bank inequitably accepted such improper fees without payment to Plaintiff and members of the Class for their value.

114. Limestone Bank should not be allowed to profit or enrich itself inequitably at Plaintiff and the Class's expense and should be required to make restitution to Plaintiff and the Class.

**FOURTH CLAIM FOR RELIEF**  
**Violation of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300)**  
**(On Behalf of Plaintiff and the Class)**

115. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

116. The Commonwealth of Kentucky believes that “the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services.” KRS § 367.120(1).

117. In furtherance of this public policy objective, the Kentucky Consumer Protection Act (the “KCPA”) was enacted in order to prevent “unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce.” KRS § 367.170(1).

118. Limestone Bank engaged in trade or commerce as defined in the KCPA because it offered its bank account deposit, checking, and debit card services to the people of Kentucky, including Plaintiff and members of the Class.

119. Plaintiff has standing to bring this action under KRS § 367.220 because she entered into a contract with Limestone Bank for the purchase of its bank account deposit, checking and debit card services primarily for personal, family or household purposes.

120. “Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce” are unlawful pursuant to the KCPA. KRS § 367.170(1).

121. Limestone Bank engaged in unfair, false, misleading, or deceptive acts or practices or otherwise violated KCPA by, among other things, knowingly and intentionally employing a policy and practice of charging improper fees.

122. Limestone Bank’s conduct caused Plaintiff and the members of the Class to suffer ascertainable losses in the form of improper fees that, but for Limestone Bank’s unfair, false, misleading, or deceptive practices and policies described herein, would not have otherwise been imposed.

123. Plaintiff and Class members are entitled to damages, declaratory relief, injunctive relief, and attorneys’ fees and costs. KRS § 367.220.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff and members of the Class demand a jury trial on all claims so triable and judgment as follows:

- a. Certification for this matter to proceed as a class action;

- b. Declaratory and injunctive relief to the extent Defendant is in breach of its contract;
- c. Designation of Plaintiff as the Class Representative and designation of the undersigned as Class Counsel;
- d. Restitution of all improper fees paid to Limestone Bank by Plaintiff and the Class because of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual damages in amount according to proof;
- f. Pre- and post-judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- h. Such other relief as the Court deems just and proper.

### **JURY DEMAND**

Plaintiff, by counsel, demands trial by jury.

Dated: July 6, 2023

By: /s/ Andrew Mize  
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*\*Pro hac vice applications forthcoming*

*Attorneys for Plaintiff and the Putative Class*

**CERTIFICATE OF SERVICE**

It is hereby certified that on the 6th of July, 2023, a copy of the foregoing was filed through the Court's e-filing system and sent to the following:

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C. Anne Stewart  
DINSMORE & SHOHL LLP  
101 South Fifth Street, Suite 2500  
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annie.stewart@dinsmore.com  
*Counsel for Defendant*

/s/ Andrew Mize  
Andrew Mize (Ky. Bar No. 94453)

## What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

### ➤ What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

### ➤ What fees will I be charged if [Institution Name] pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

### ➤ What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

-----

\_\_\_ I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

\_\_\_ I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

[Account Number]: \_\_\_\_\_ ]

Case No. 23-CI-002712

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY

ROBIN COOPER, individually and on behalf of  
all others similarly situated,

PLAINTIFF

v. **PLAINTIFF'S FIRST SET OF INTERROGATORIES  
TO DEFENDANT PEOPLES BANK**

PEOPLES BANK,

DEFENDANT

\* \* \* \* \*

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 33.01, Plaintiff submits the following First Set of Interrogatories to Defendant and requests that Defendant answer and respond in writing thereto within 45 days of the service hereof and under oath as is required.

**DEFINITIONS**

As used herein, the following terms have the following meanings:

1. "Communication" means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. "Defendant" or "You" means Peoples Bank as successor of Limestone Bank and includes any and all predecessors or successors in interest, local, regional, national, and/or executive offices, divisions, or affiliates (foreign and domestic), segments, or divisions thereof, any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and

former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, e-mails, text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body, including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.



### **RELEVANT TIME PERIOD**

All requests herein refer to the period from May 3, 2008 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify all persons who have knowledge of the facts or circumstances regarding the subject matter of this lawsuit and, for each such person, describe the facts known to that person and identify all documents relating to those facts. Such persons should include but not be limited to all persons (a) who have knowledge of facts you will use in opposing a motion for class certification; (b) who have knowledge of the policies, practices, and procedures you employed concerning the manner or sequence in which your customers’ transactions were or are authorized or posted to their accounts; and (c) who have knowledge of the policies, practices, and procedures CBTC employed concerning Overdraft Fees and NSF Fees.

#### **RESPONSE:**

#### **INTERROGATORY NO. 2:**

Identify each Overdraft Fee CBTC assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the Overdraft Fee and state all facts that show the basis on which the account was deemed to have been subject to an Overdraft Fee. For each item identified, also state:

- (a) the date and time CBTC authorized the item;
- (b) the date and time CBTC received the item;
- (c) the amount of available funds in the account being debited at the time the

transaction was initiated and the manner in which CBTC determined available funds;

- (d) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the manner in which you determined available funds;
- (e) the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds;
- (f) the date and time the item was debited from the account;
- (g) the amount by which the transaction overdrew the account; and
- (h) the date and time CBTC received payment for an Overdraft Fee.

**RESPONSE:**

**INTERROGATORY NO. 3:**

Identify each NSF Fee CBTC assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the NSF Fee and state all facts that show the basis on which the account was deemed to have been subject to an NSF Fee. For each item identified, also state:

- (a) Customer account number;
- (b) Posting date;
- (c) Transaction amount;
- (d) Transaction code;
- (e) Retry or repeat transaction indicator;

- (f) Transaction category;
- (g) The date and/or time an NSF Fee was charged to the account based on the transaction;
- (h) Fee amount;
- (i) Merchant name; and
- (j) Transaction description field.

**RESPONSE:**

**INTERROGATORY NO. 4:**

Describe with particularity all policies, practices or procedures CBTC used, at any time during the Relevant Time Period, to determine the manner in which items are posted to customers' accounts, including, but not limited to, CBTC's policies, practices or procedures to charge CBTC customers Overdraft Fees, including Overdraft Fees on transactions authorized with sufficient available funds at the time of authorization. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedure.

**RESPONSE:**

**INTERROGATORY NO. 5:**

Describe with particularity all policies, practices, or procedures CBTC used to charge customers NSF Fees, including NSF Fees on items for which NSF Fees had already been assessed one or more times. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedures used during the Relevant Time Period.

**RESPONSE:****INTERROGATORY NO. 6:**

Identify all persons with knowledge of CBTC's decisions concerning the creation, adoption, implementation, or proposal of any changes to each policy, practice, and procedure described in Interrogatories 4 and 5 above.

**RESPONSE:****INTERROGATORY NO. 7:**

If any policy, practice or procedure described in Interrogatories 4 and 5 above changed or if a change was considered but not adopted or implemented, explain in detail who was involved in considering, deciding to adopt, or implementing the change; when the change was made or considered; how the change was implemented internally and how CBTC customers were notified; why CBTC changed or considered changing the policy, practice, or procedure; and why CBTC opted not to adopt or implement the proposed change, and identify all documents concerning the change.

**RESPONSE:****INTERROGATORY NO. 8:**

Explain in detail all actions CBTC has taken to disclose or inform its account holders of its policies, practices, and procedures concerning Overdraft Fees, NSF Fees, and how account holders can check their available balance on their checking account.

**RESPONSE:**



**INTERROGATORY NO. 9:**

On an annual basis for each year during the Relevant Time Period, state:

- (a) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions you assessed against your customers' accounts;
- (b) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions assessed against customers' accounts that you have forgiven, waived, reversed or otherwise not collected;
- (c) the number of your customers' accounts that have been assessed Overdraft Fees on electronic transactions initially authorized into a positive available balance;
- (d) CBTC's total gross revenues from consumer banking operations;
- (e) CBTC's total service fees on deposits;
- (f) the aggregate total dollar amount of NSF Fees assessed against CBTC customers;  
and
- (g) the aggregate total dollar amount of NSF Fees assessed against CBTC customers for "retry payments."

**RESPONSE:****INTERROGATORY NO. 10:**

Explain in detail how CBTC determines whether to authorize a debit transaction made on a customer's account. In the event an automated algorithm is used, describe in detail each factor considered by the algorithm and the weight ascribed to each such factor.

**RESPONSE:**

**INTERROGATORY NO. 11:**

Identify and describe the policy or procedures by which you have processed and posted or currently process and post pending items to your customers' checking accounts when calculating and displaying the balances of their checking accounts to your customers, the reason(s) for such policy or procedures, and whether such policy or procedures applied to all deposit accounts.

**RESPONSE:****INTERROGATORY NO. 12:**

Explain in detail the order in which you list items on your customers' account statements, your reason(s) for listing them in that order, and whether such ordering applied to all deposit accounts.

**RESPONSE:****INTERROGATORY NO. 13:**

Explain in detail the current and former policy or procedure by which CBTC's internet or mobile banking service or application displays pending items to CBTC customers' checking accounts and posted items to CBTC customers' checking accounts.

**RESPONSE:****INTERROGATORY NO. 14:**

Identify and describe any documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning CBTC's Overdraft or NSF Fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue

projections.

**RESPONSE:**

Dated: July 6, 2023

By: /s/ Andrew Mize

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Case No. 23-CI-002712

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY

ROBIN COOPER, individually and on behalf of  
all others similarly situated,

PLAINTIFF

v.

**PLAINTIFF'S FIRST SET OF REQUESTS FOR  
PRODUCTION TO DEFENDANT PEOPLES BANK**

PEOPLES BANK,

DEFENDANT

\* \* \* \* \*

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 34.01, Plaintiff submits the following First Set of Requests for Production to Defendant and requests that Defendant produce the Documents and things described herein for inspection and copying within 45 days.

**DEFINITIONS**

As used herein the following terms have the following meanings:

1. “Communication” means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. “Defendant” or “You” means Peoples Bank as successor of Limestone Bank and includes any and all predecessors or successors in interest, local, regional, national, and/or executive offices, divisions, or affiliates (foreign and domestic), segments, or divisions thereof,

any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, electronic-mails (“e-mails”), text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body,



including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.

### **RELEVANT TIME PERIOD**

All requests herein refer to the period from May 3, 2008 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce all Documents that concern any account of any type associated with Plaintiff, whether presently open or closed, including, but not limited to, any and all communications between Defendant and Plaintiff, and Documents sufficient to show all account activity in any such account.

#### **RESPONSE:**

#### **REQUEST FOR PRODUCTION NO. 2:**

Produce the account contract(s), disclosures, and all related Documents that Defendant contends govern any aspect of Plaintiff’s relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

#### **RESPONSE:**

#### **REQUEST FOR PRODUCTION NO. 3:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against an

account held by Plaintiff, produce all Documents reflecting:

- (a) the date and time the transaction was initiated, authorized, and when you first received notice of the dollar amount of the transaction;
- (b) the amount of available funds in the account being debited at the time the transaction was initiated and the way you determined available funds;
- (c) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the way you determined available funds;
- (d) the amount of available funds in the account being debited at the time the transaction was authorized and the way you determined available funds;
- (e) the amount by which the transaction overdrew the account;
- (f) the date and time the Overdraft Fee was deducted from the account based on the transaction; and
- (g) the date and time Defendant received payment for the Overdraft Fee.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 4:**

Produce all Documents concerning the specific criteria and dollar amounts upon which Defendant determined whether or not transactions would be authorized where such authorization would cause an overdraft, including, but not limited to: the ledger balance in the account, the available balance, the collected balance in the account, the historical frequency of overdrafts, the historical total of overdrafts and Overdraft Fees, the dollar amount of the particular charge, the dollar amount per day, the consistency of deposits, and/or the existence of other accounts at

Defendant.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 5:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to charge Defendant customers Overdraft Fees, including on transactions authorized with sufficient available funds at the time of authorization and Overdraft Fees caused as a result of the deduction of other Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 6:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to deduct Overdraft Fees from accounts immediately and prior to the availability of sufficient funds to pay them.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 7:**

Produce all Documents concerning all methods by which Defendant customers can obtain information on the available balance of their checking accounts.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 8:**

Produce the account contracts and/or disclosures and all related Documents that Defendant

contents govern any aspect of a checking account customer's relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 9:**

Produce all Documents that Defendant has provided to Defendant customers reflecting a schedule of fees, including, but not limited to, Overdraft Fees, for services. Include all notices or messages sent to Defendant customers regarding any revision or modification of such schedule of fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 10:**

Produce organizational charts sufficient to show the names, titles and positions of all Persons, departments, entities, divisions, subdivisions, affiliates, subsidiaries, agents and other Persons and entities that provide checking account and overdraft fee services to Defendant's customers, including, but not limited to, all Persons and entities involved in determining or assessing fees, operating your Hogan or RTS (or equivalent) system, or operating any debit card processing systems, and all Persons and entities with responsibilities pertaining to the storage and retention of written and electronic records related thereto.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 11:**

Produce exemplar copies of all advertisements and other marketing materials utilized by Defendant to promote Defendant checking accounts and overdraft services.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 12:**

Produce all Documents that refer or relate to market research, surveys, studies, analysis, and/or other consumer research or surveys conducted on the topic of debit cards or Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 13:**

Produce exemplar screen-by-screen depictions of the Defendant online or mobile banking interface displaying the appearance of authorized or pending transactions before and after they are posted to an account.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 14:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against a checking account, produce all Documents concerning the following data elements: customer account number; posting date; transaction amount; transaction code; available balance at the time of posting; ledger balance at the time of posting; recurring payment indicator; problem item indicator; negative authorization indicator; transaction category or type; the date and/or time an Overdraft Fee was charged to the account based on the transaction; Overdraft Fee amount; the date



and time the transaction was authorized; the amount authorized; and the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 15:**

For each transaction representing a refund of an Overdraft Fee credited to a checking account, produce all Documents concerning the customer account number; posting date; transaction amount; and transaction code.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 16:**

Produce all consumer complaints regarding the practices challenged in Plaintiff's complaint and all communications regarding the same.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 17:**

Produce all Documents that refer or relate to all methods by which Defendant customers can obtain information regarding resubmission of electronic payments through the ACH system.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 18:**

Produce Documents, including a general ledger, sufficient to reflect your quarterly and

annual revenue, margins, and net income during the Relevant Time Period, including, without limitation, your revenue, margins and net income from fees and other non-interest charges, including, without limitation, your revenue, margins and net income from Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 19:**

Produce all Documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning Defendant fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue projections.

**RESPONSE:**

Dated: July 6, 2023

By: /s/ Andrew Mize  
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*Attorneys for Plaintiff and the Putative Class*

**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**CLASS ACTION COMPLAINT**

**JURY DEMAND**

**CLASS ACTION COMPLAINT**

Plaintiff, Robin Cooper, individually and on behalf of the class of persons preliminarily defined below (the “Class”), makes the following allegations based upon information and belief, except as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge.

**NATURE OF THE ACTION**

1. This is a civil action seeking monetary damages, restitution, and injunctive and declaratory relief from Limestone Bank, Inc. (“Defendant”), arising from its improper assessment and collection of \$35 overdraft fees (“OD Fees”) on debit card transactions that were authorized on sufficient funds.

2. Besides being deceptive, these practices breach contract promises made in Defendant’s adhesion contracts which, upon information and belief, include the Overdraft Opt-In Form attached hereto as Exhibit A (the “Contract”).

3. Plaintiff and other Defendant customers have been injured by Defendant’s practices. Plaintiff, individually and on behalf of the class of individuals preliminarily defined below, bring claims for breach of contract, including the duty of good faith and fair dealing, unjust

enrichment and violations of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300) (the “KCPA”).

### **PARTIES**

4. Plaintiff is an individual and citizen of Kentucky, and a resident of Daviess County, and has had a checking account with Defendant at all times material hereto.

5. Defendant is a bank with over \$1.5 billion in assets with and maintains several branches in Kentucky including in this County. Its principal place of business is in this County.

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter because Defendant is at home in this State.

7. Defendant regularly and systematically conducts business and provides retail banking services in this state and provides retail banking services to customers in this state, including Plaintiff and members of the putative Class. As such, it is subject to the jurisdiction of this Court.

8. Venue is likewise proper in this county pursuant to KRS § 452.445 because Defendant’s principal office is in this County.

9. Pursuant to CR 8.01, the amount in controversy exceeds the minimum jurisdiction of the Jefferson Circuit Court.

### **BACKGROUND FACTS**

10. In 2021, the largest financial institutions in America charged customers almost \$11 billion in overdraft fees. Customers who carried an average balance of less than \$350 paid 84 percent of these fees. *Why Poverty Persists in America* (The New York Times, Mar. 9, 2023), <https://www.nytimes.com/2023/03/09/magazine/poverty-by-america-matthew-desmond.html>.



11. Because of this, industry leaders like Bank of America, Capital One, Wells Fargo, Alliant, and Ally have made plans to end the assessment of OD or NSF fees entirely. *See* Hugh Son, *Capital One to Drop Overdraft Fees for All Retail Banking Customers*, NBC News (Dec. 1, 2021), <https://nbcnews.to/3DKSu2R>; Paul R. La Monica, *Wells Fargo Ends Bounced Check Fees*, CNN (Jan. 12, 2022), <https://bit.ly/3iTAN9k>.

12. Federal regulators have also taken action. For example, the Consumer Financial Protection Bureau (CFPB) recently fined Regions Bank \$191 million, finding that it “acted unfairly and abusively” in violation of the Consumer Financial Protection Act of 2010 by assessing *the same “surprise” APSN fees at issue here*. CFPB, Enforcement Actions, Regions Bank (Sep. 28, 2022), available at [https://www.consumerfinance.gov/enforcement/actions/regions-bank\\_2022](https://www.consumerfinance.gov/enforcement/actions/regions-bank_2022) (last accessed Mar. 22, 2023).

13. In line with this industry trend, the New York Attorney General recently asked other industry leading banks to end the assessment of all OD Fees by the summer of 2022. *NY Attorney General asks banks to end overdraft fees*, Elizabeth Dilts Marshall, Reuters (April 6, 2022).

14. Through the imposition of these fees, Defendant has made substantial revenue to the tune of tens of millions of dollars, seeking to turn its customers’ financial struggles into revenue.

**I. DEFENDANT ASSESSES OVERDRAFT FEES ON DEBIT CARD TRANSACTIONS THAT WERE AUTHORIZED ON SUFFICIENT FUNDS.**

15. Plaintiff brings this action challenging Defendant’s practice of charging Overdraft Fees on what are referred to in this complaint as “Authorize Positive, Settle Negative Transactions,” or “APSN Transactions.”

16. Defendant's practice is as follows: the moment debit card transactions are authorized on an account with positive funds to cover the transaction, Defendant immediately reduces consumers' checking accounts for the amount of the purchase, sets aside funds in the checking account to cover that transaction, and adjusts the consumer's displayed "available balance" to reflect that subtracted amount. As a result, customers' accounts will always have sufficient funds available to cover these transactions because Defendant has already held the funds for payment.

17. However, Defendant still assesses crippling Overdraft Fees on many of these transactions and misrepresents its practices in the Contract.

18. Despite putting aside sufficient available funds for debit card transactions at the time those transactions are authorized, Defendant later assesses Overdraft Fees on those same transactions when they settle days later into a negative balance. These types of transactions are APSN Transactions.

19. Defendant maintains a running account balance, tracking funds consumers have for immediate use. This running account balance is adjusted, in real-time, to account for debit card transactions at the precise instance they are made. When a customer makes a purchase with a debit card, Defendant holds the funds needed to pay the transaction, subtracting the dollar amount of the transaction from the customer's available balance. Such funds are not available for any other use by the account holder and are specifically reserved for a given debit card transaction.

20. Indeed, the entire purpose of the immediate debit and hold of positive funds is to ensure that there are enough funds in the account to pay the transaction when it settles:

When a consumer uses a debit card to make a purchase, a hold may be placed on funds in the consumer's account to ensure that the consumer has sufficient funds in the account when the transaction is presented for settlement. This is commonly referred to as a "debit hold." During the time the debit hold remains in place, which

may be up to three days after authorization, those funds may be unavailable for the consumer's use for other transactions.

Federal Reserve Board, Office of Thrift Supervision, and National Credit Union Administration, Unfair or Deceptive Acts or Practices, 74 FR 5498 (Jan. 29, 2009).

21. That means when any subsequent, intervening transactions are initiated on a checking account, they are compared against an account balance that has already been reduced to account for pending debit card transactions. Therefore, many subsequent transactions incur Overdraft Fees due to the unavailability of the funds held for earlier debit card transactions.

22. Still, despite always reserving sufficient available funds to cover the transactions and keeping the held funds off-limits for other transactions, Defendant improperly charges Overdraft Fees on APSN Transactions.

23. The Consumer Financial Protection Bureau ("CFPB") has expressed concern with this very issue, flatly calling the practice "unfair" and/or "deceptive" when:

[A] financial institution authorized an electronic transaction, which reduced a customer's available balance but did not result in an overdraft at the time of authorization; settlement of a subsequent unrelated transaction that further lowered the customer's available balance and pushed the account into overdraft status; and when the original electronic transaction was later presented for settlement, because of the intervening transaction and overdraft fee, the electronic transaction also posted as an overdraft and an additional overdraft fee was charged. Because such fees caused harm to consumers, one or more supervised entities were found to have acted unfairly when they charged fees in the manner described above. Consumers likely had no reason to anticipate this practice, which was not appropriately disclosed. They therefore could not reasonably avoid incurring the overdraft fees charged. Consistent with the deception findings summarized above, examiners found that the failure to properly disclose the practice of charging overdraft fees in these circumstances was deceptive.

At one or more institutions, examiners found deceptive practices relating to the disclosure of overdraft processing logic for electronic transactions. Examiners noted that these disclosures created a misimpression that the institutions would not charge an overdraft fee with respect to an electronic transaction if the authorization of the transaction did not push the customer's available balance into overdraft status. But the institutions assessed overdraft fees for electronic transactions in a manner inconsistent with the overall net impression created by the disclosures. Examiners therefore concluded that the disclosures were misleading or likely to

mislead, and because such misimpressions could be material to a reasonable consumer's decision-making and actions, examiners found the practice to be deceptive. Furthermore, because consumers were substantially injured or likely to be so injured by overdraft fees assessed contrary to the overall net impression created by the disclosures (in a manner not outweighed by countervailing benefits to consumers or competition), and because consumers could not reasonably avoid the fees (given the misimpressions created by the disclosures), the practice of assessing the fees under these circumstances was found to be unfair.

Consumer Financial Protection Bureau, "Supervisory Highlights" (Winter 2015).

24. There is no justification for these practices, other than to maximize Defendant's Overdraft Fee revenue. APSN Transactions only exist because intervening transactions supposedly reduce an account balance. But Defendant is free to protect its interests and either reject those intervening transactions or charge Overdraft Fees on those intervening transactions—and it does the latter to the tune of millions of dollars each year.

25. But Defendant was not content with these millions in Overdraft Fees. Instead, it sought millions more in Overdraft Fees on APSN Transactions.

26. Besides being deceptive, unfair, and unconscionable, these practices breach contract promises made in Defendant's adhesion contracts, which fundamentally misconstrue and mislead consumers about the true nature of Defendant's processes and practices. Defendant also exploits its contractual discretion by implementing these practices to gouge its customers.

**i. Mechanics of a Debit Card Transaction**

27. A debit card transaction occurs in two parts. First, authorization for the purchase amount is instantaneously obtained by the merchant from Defendant. When a customer physically or virtually "swipes" their debit card, the credit card terminal connects, via an intermediary, to Defendant, which verifies that the customer's account is valid and that sufficient available funds exist to cover the transaction amount.

28. At this step, if the transaction is approved, Defendant immediately decrements the funds in a consumer's account and holds funds in the amount of the transaction but does not yet transfer the funds to the merchant.

29. Sometime thereafter, the funds are actually transferred from the customer's account to the merchant's account.

30. Defendant (like all banks and credit unions) decides whether to "pay" debit card transactions at authorization. For debit card transactions, that moment of decision can only occur at the point of sale, when the transaction is authorized or declined. It is at that point—and only that point—that Defendant may choose to either pay the transaction or to decline it. When the time comes to actually transfer funds for the transaction to the merchant, it is too late for the bank to deny payment—the bank has no discretion and must pay the charge. This "must pay" rule applies industry wide and requires that, once a financial institution authorizes a debit card transaction, it "must pay" it when the merchant later makes a demand, regardless of other account activity. See Electronic Fund Transfers, 74 Fed. Reg. 59033-01, 59046 (Nov. 17, 2009).

31. There is no change—no impact whatsoever—to the available funds in an account when transfer step occurs.

**ii. Defendant's Contract**

32. Upon information and belief, Defendant promises in its Contract that "[a[n] overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway." Ex. A.

33. In breach of this promises, Defendant assesses Overdraft Fees when there is enough money in the account to cover the transaction.



34. Taken together, these promises also mean that Defendant will place holds on funds at the time of the authorization of a debit card transaction, which is when Plaintiff pays the merchant, and that these holds reduce Plaintiff's available balance, which is the balance that Defendant uses to determine OD Fees.

35. Upon information and belief, Defendant further promises that authorization and payment occur simultaneously and that overdrafts will be determined at the time Defendant "authorize[s] and pay[s]" the debit card transaction:

We do ***authorize and pay*** overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not ***authorize and pay*** overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always ***authorize and pay*** any type of transaction.

If we do not ***authorize and pay*** an overdraft, your transaction will be declined.

...

What if I want [Defendant] to ***authorize and pay*** overdrafts on my ATM and everyday debit card transactions?

If you also want us to ***authorize and pay*** overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

\_\_\_ I do not want [Defendant] to ***authorize and pay*** overdrafts on my ATM and everyday debit card transactions.



43. Defendant's practice of charging Overdraft Fees even when sufficient available funds exist to cover a transaction violates its contractual promise not to do so. This discrepancy between Defendant's actual practice and the Contract causes consumers like Plaintiff to incur more Overdraft Fees than they should.

44. Next, sufficient funds for APSN Transactions are actually debited from the account immediately, consistent with standard industry practice.

45. Because these withdrawals take place upon initiation, the funds cannot be re-debited later. But that is what Defendant does when it re-debits the account during a secret batch posting process.

46. Defendant's actual practice is to assay the same debit card transaction twice to determine if it overdraws an account—both at the time a transaction of authorization and later at the time of settlement.

47. At the time of settlement, however, an available balance does not change at all for these transactions previously authorized into positive funds. As such, Defendant cannot then charge an Overdraft Fee on that transaction because the available balance has not been rendered insufficient due to the pseudo-event of settlement.

48. Upon information and belief, something more is going on: at the moment a debit card transaction is getting ready to settle, Defendant releases the hold placed on funds for the transaction for a split second, putting money back into the account, then re-debits the same transaction a second time.

49. This secret step allows Defendant to charge Overdraft Fees on transactions that never should have gotten them—transactions that were authorized into sufficient funds, and for which Defendant specifically set aside money to pay.

50. In sum, there is a huge gap between Defendant's practices as described in the Contract and Defendant's actual practices.

51. Banks and credit unions like Defendant that employ this abusive practice require their accountholders to expressly agree to it—something Defendant here never did.

52. Indeed, recognizing the complexity of the settlement process for APSN Transactions and the fact that a fee in such circumstances is counterintuitive to accountholders, other banks and credit unions require their accountholders to agree to be assessed Overdraft Fees on APSN Transactions.

53. Defendant and its accountholders make no such agreement. The Contract thus misleads and deceives account holders.

**iii. Reasonable Consumers Understand Debit Card Transactions Are Debited Immediately**

54. Defendant's assessment of Overdraft Fees on transactions that have not overdrawn an account is inconsistent with immediate withdrawal of funds for debit card transactions. This is because if funds are immediately debited, they cannot be depleted by intervening, subsequent transactions. If funds are immediately debited, they are necessarily applied to the debit card transactions for which they are debited.

55. Defendant was and is aware that this is precisely how its accountholders reasonably understand debit card transactions work.

56. Defendant knows that consumers prefer debit cards for these very reasons. Consumer research shows that consumers prefer debit cards as budgeting devices because they don't allow debt like credit cards as the money comes directly out of the checking account.

57. Consumer Action, a national nonprofit consumer education and advocacy organization, advises consumers determining whether they should use a debit card that "[t]here is

no grace period on debit card purchases the way there is on credit card purchases; the money is immediately deducted from your checking account. Also, when you use a debit card you lose the one or two days of ‘float’ time that a check usually takes to clear.” *What Do I Need To Know About Using A Debit Card?*, ConsumerAction (Jan. 14, 2019), <https://bit.ly/3v5YL62>.

58. This understanding is a large part of the reason that debit cards have risen in popularity. The number of terminals that accept debit cards in the United States has increased by approximately 1.4 million in the last five years, and with that increasing ubiquity, consumers have viewed debit cards (along with credit cards) “as a more convenient option than refilling their wallets with cash from an ATM.” Maria LaMagna, *Debit Cards Gaining on Case for Smallest Purchases*, MarketWatch (Mar. 23, 2016), <https://on.mktw.net/3kV2zCH>.

59. Not only have consumers increasingly substituted debit cards for cash, but they believe that a debit card purchase is the functional equivalent to a cash purchase, with the swipe of a card equating to handing over cash, permanently and irreversibly.

60. Accordingly, “[o]ne of the most salient themes [in complaints to the CFPB] . . . is the difficulty avoiding overdrafts even when consumers believed they would. Often, this was related to bank practices that make it difficult for consumers to know balance availability, transaction timing, or whether or not overdraft transactions would be paid or declined.” Rebecca Borne et al., *Broken Banking: How Overdraft Fees Harm Consumers and Discourage Responsible Bank Products*, Center for Responsible Lending 8 (May 2016), <https://bit.ly/3v7SvL1>.



61. In fact, consumers’ leading complaints involved extensive confusion over the available balance and the time of posting debits and credits:

Figure 3: Top Overdraft Consumer Complaint Issues, by Percentage of Total Complaints



*Id.*

62. Consumers are particularly confused by financial institutions’ fee practices when “based on their actual review of their available balance, often including any ‘pending’ transactions, [customers] believed funds were available for transactions they made, but they later learned the transactions had triggered overdraft fees.” *Id.* at 9.

63. Ultimately, unclear and misleading fee representations like those in Defendant’s account documents mean that consumers like Plaintiff “who are carefully trying to avoid overdraft, and often believe they will avoid it . . . end up being hit by fees nonetheless.” *Id.*

64. The Federal Deposit Insurance Corporation (“FDIC”) has specifically noted that financial institutions may effectively mitigate this wide-spread confusion regarding overdraft practices by “ensuring that any transaction authorized against a positive available balance does not incur an overdraft fee, even if the transaction later settles against a negative available balance.” *Consumer Compliance Supervisory Highlights*, FDIC 3 (June 2019), <https://bit.ly/3t2ybsY>.

65. Despite this recommendation, Defendant continues to assess Overdraft Fees on transactions that are authorized on sufficient funds.

66. Defendant was aware of the consumer perception that debit card transactions reduce an account balance at a specified time—namely, the time and order the transactions are actually initiated—and the Contract only supports this perception.

67. Defendant was also aware of consumers’ confusion regarding Overdraft Fees but nevertheless failed to make its customers agree to these practices.

**iv. Plaintiff Was Assessed an Overdraft Fee on Debit Card Transactions Previously Authorized on Sufficient Funds**

68. On January 18, 2022, May 6, 2022 and September 19, 2022, Plaintiff was assessed Overdraft Fees on transactions previously authorized on sufficient funds.

69. Because Defendant had previously held the funds to cover these transactions, Plaintiff’s account always had sufficient funds to “cover” the transactions and should not have been assessed these fees.

70. The improper fees charged by Defendant were also not errors by Defendant, but rather were intentional charges made by Defendant as part of its standard processing of transactions.

71. Plaintiff therefore had no duty to report the fees as errors because they were not errors, but were part of the systematic and intentional assessment of fees according to Defendant standard practices.

72. Moreover, any such reporting would have been futile as Defendant’s own contract admits that Defendant made a decision to charge the fees.

### CLASS ALLEGATIONS

73. Plaintiff brings this action individually and as a class action on behalf of the following proposed Class:

All Kentucky citizens who, during the applicable statute of limitations, were Defendant checking account holders and were assessed an overdraft fee on a debit card transaction that was authorized on sufficient funds and settled on negative funds in the same amount for which the debit card transaction was authorized.

Plaintiff reserves the right to modify or amend the definition of the Class as this litigation proceeds.

74. Excluded from the Class are Defendant, its parents, subsidiaries, affiliates, officers and directors, any entity in which Defendant has a controlling interest, all customers who make a timely election to be excluded, governmental entities, and all judges assigned to hear any aspect of this litigation, as well as their immediate family members.

75. The time period for the Class is the number of years immediately preceding the date on which this Complaint was filed as allowed by the applicable statute of limitations, going forward into the future until such time as Defendant remedies the conduct complained of herein.

76. The members of the Class are so numerous that joinder is impractical. The Class consist of thousands of members, the identities of whom are within the exclusive knowledge of Defendant and can be readily ascertained only by resort to Defendant's records.

77. The claims of the representative Plaintiff are typical of the claims of the Class in that the representative Plaintiff, like all members of the Class, was charged improper fees as set forth herein. The representative Plaintiff, like all members of the Class, has been damaged by Defendant's misconduct. Furthermore, the factual basis of Defendant's misconduct is common to all members of the Class and represents a common thread of unlawful and unauthorized conduct resulting in injury to all members of the Class. Plaintiff has suffered the harm alleged and have no interests antagonistic to the interests of any other members of the Class.

78. There are numerous questions of law and fact common to the Class and those common questions predominate over any questions affecting only individual members of the Class.

79. Among the questions of law and fact common to the Class include:

- a. Whether Defendant charged OD Fees on APSN Transactions;
- b. Whether this fee practice breached the Contract and Defendant's duty of good faith and fair dealing;
- c. Whether Defendant was unjustly enriched by this practice;
- d. Whether Defendant violated the KCPA;
- e. The proper method or methods by which to measure damages; and
- f. The declaratory and injunctive relief to which the Class are entitled.

80. Plaintiff is committed to the vigorous prosecution of this action and has retained competent counsel experienced in the prosecution of class actions, particularly on behalf of consumers and against financial institutions. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

81. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the amount of each individual class member's claim is small relative to the complexity of the litigation, no class member could afford to seek legal redress individually for the claims alleged herein. Therefore, absent a class action, the members of the Class will continue to suffer losses and Defendant's misconduct will proceed without remedy.

82. Even if class members themselves could afford such individual litigation, the court system could not. Given the complex legal and factual issues involved, individualized litigation would significantly increase the delay and expense to all parties and to the Court. Individualized litigation would also create the potential for inconsistent or contradictory rulings. By contrast, a

class action presents far fewer management difficulties, allows for the consideration of claims which might otherwise go unheard because of the relative expense of bringing individual lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive supervision by a single court.

83. Plaintiff suffers a substantial risk of repeated injury in the future. Plaintiff, like all Class members, is at risk of additional improper fees. Plaintiff and the Class members are entitled to injunctive and declaratory relief as a result of the conduct complained of herein. Money damages alone could not afford adequate and complete relief, and injunctive relief is necessary to restrain Defendant from continuing to commit its unfair and illegal actions.

**FIRST CLAIM FOR RELIEF**  
**Breach of Contract, Including Breach of the Duty of Good Faith and Fair Dealing**  
*(On Behalf of Plaintiff and the Class)*

84. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

85. Plaintiff and Defendant have contracted for banking services, as embodied in Defendant's account documents. *See* Exs. A.

86. All contracts entered by Plaintiff and the Class are identical or substantively identical because Defendant's form contracts were used uniformly.

87. Defendant has breached the express terms of its own agreements as described herein.

88. Knetucky imposes a duty of good faith and fair dealing on contracts between banks and their customers because banks are inherently in a superior position to their checking account holders because, from a superior vantage point, they offer customers contracts of adhesion, often with terms not readily discernible to a layperson.



89. Defendant abuses its discretion in its own favor—and to the prejudice of Plaintiff and other customers—by charging OD Fees on APSN Transactions. This is an abuse of the power that Defendant has over Plaintiff and her bank account, is contrary to Plaintiff’s reasonable expectations under the Contract, and breaches Defendant’s implied covenant to engage in fair dealing and to act in good faith.

90. Good faith and fair dealing, in connection with executing contracts and discharging performance and other duties according to their terms, means preserving the spirit—not merely the letter—of the bargain. Put differently, the parties to a contract are mutually obligated to comply with the substance of their contract in addition to its form. Evading the spirit of the bargain and abusing the power to specify terms constitute examples of bad faith in the performance of contracts.

91. Defendant has breached the covenant of good faith and fair dealing in the contract through its policies and practices as alleged herein.

92. Defendant harms Plaintiff and members of the Class by abusing its contractual discretion that no reasonable customer would anticipate.

93. Plaintiff and members of the Class have performed all, or substantially all, of the obligations imposed on them under the Contract.

94. Plaintiff and members of the Class have sustained damages because of Defendant’s breach of the Contract.

95. Plaintiff and members of the Class have sustained damages because of Defendant’s breach of the covenant of good faith and fair dealing.

**SECOND CLAIM FOR RELIEF**  
**Unjust Enrichment**  
**(On Behalf of Plaintiff and the Class)**

96. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

97. Plaintiff and members of the Class conferred a benefit on Defendant at the expense of Plaintiff and members of the Class when they paid improper OD Fees.

98. There was an appreciation of this benefit by Defendant in the form of the substantial revenue that Defendant generates from the imposition of such fees.

99. Defendant has inequitably accepted such improper fees without payment to Plaintiff and members of the Class for their value.

100. Defendant should not be allowed to profit or enrich itself inequitably at the Plaintiff' and the Class' expense and should be required to make restitution to Plaintiff and the Class.

**THIRD CLAIM FOR RELIEF**  
**Violation of the Kentucky Consumer Protection Act (KRS §§ 367.110 – 367.300)**  
**(On Behalf of Plaintiff and the Class)**

101. Plaintiff incorporates the preceding allegations by reference as if fully set forth herein.

102. The Commonwealth of Kentucky believes that “the public health, welfare and interest require a strong and effective consumer protection program to protect the public interest and the well-being of both the consumer public and the ethical sellers of goods and services.” KRS § 367.120(1).

103. In furtherance of this public policy objective, the Kentucky Consumer Protection Act (the “KCPA”) was enacted in order to prevent “unfair, false, misleading or deceptive acts or practices in the conduct of any trade or commerce.” KRS § 367.170(1).

104. Defendant is engaged in trade or commerce as defined in the KCPA because it offered and continues to offer its bank account deposit, checking, and debit card services to the people of Kentucky, including Plaintiff and members of the Class.

105. Plaintiff has standing to bring this action under KRS § 367.220 because they entered into a contract with Defendant for the purchase of its bank account deposit, checking and debit card services primarily for personal, family or household purposes.

106. “Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce” are unlawful pursuant to the KCPA. KRS § 367.170(1).

107. Defendant engaged in unfair, false, misleading, or deceptive acts or practices or otherwise violated KCPA by, among other things, knowingly and intentionally employing a policy and practice of charging improper fees.

108. Defendant’s conduct caused Plaintiff and the members of the Class to suffer ascertainable losses in the form of improper fees that, but for Defendant’s unfair, false, misleading, or deceptive practices and policies described herein, would not have otherwise been imposed.

109. Plaintiff and Class members are entitled to damages, declaratory relief, injunctive relief, and attorneys’ fees and costs. KRS § 367.220.

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff and members of the Class demand a jury trial on all claims so triable and judgment as follows:

- a. Certification for this matter to proceed as a class action;

- b. Declaratory and injunctive relief to the extent Defendant is in breach of its contract;
- c. Designation of Plaintiff as the Class Representative and designation of the undersigned as Class Counsel;
- d. Restitution of all improper fees paid to Defendant by Plaintiff and the Class because of the wrongs alleged herein in an amount to be determined at trial;
- e. Actual damages in amount according to proof;
- f. Pre- and post-judgment interest at the maximum rate permitted by applicable law;
- g. Costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees pursuant to applicable law; and
- h. Such other relief as the Court deems just and proper.

### **JURY DEMAND**

Plaintiff, by counsel, demands trial by jury.

Dated: May 3, 2023

By: /s/ Andrew Mize

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Presiding Judge: HON. MITCH PERRY (630267)

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## What You Need to Know about Overdrafts and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

### ➤ What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

### ➤ What fees will I be charged if [Institution Name] pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

### ➤ What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

-----

\_\_\_ I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

\_\_\_ I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

[Account Number]: \_\_\_\_\_ ]

**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**PLAINTIFF'S FIRST SET OF INTERROGATORIES  
TO DEFENDANT LIMESTONE BANK**

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 33.01, Plaintiff submits the following First Set of Interrogatories to Defendant and requests that Defendant answer and respond in writing thereto within 45 days of the service hereof and under oath as is required.

**DEFINITIONS**

As used herein, the following terms have the following meanings:

1. "Communication" means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. "Defendant" or "You" means Limestone Bank, Inc., and includes any and all predecessors or successors in interest, local, regional, national, and/or executive offices, divisions,

or affiliates (foreign and domestic), segments, or divisions thereof, any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, e-mails, text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body,

including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.

### **RELEVANT TIME PERIOD**

All requests herein refer to the period from June 1, 2006 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **INTERROGATORIES**

#### **INTERROGATORY NO. 1:**

Identify all persons who have knowledge of the facts or circumstances regarding the subject matter of this lawsuit and, for each such person, describe the facts known to that person and identify all documents relating to those facts. Such persons should include but not be limited to all persons (a) who have knowledge of facts you will use in opposing a motion for class certification; (b) who have knowledge of the policies, practices, and procedures you employed concerning the manner or sequence in which your customers’ transactions were or are authorized or posted to their accounts; and (c) who have knowledge of the policies, practices, and procedures Limestone Bank employed concerning Overdraft Fees and NSF Fees.

#### **RESPONSE:**

#### **INTERROGATORY NO. 2:**

Identify each Overdraft Fee Limestone Bank assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the Overdraft Fee and state all facts that show the basis on which the account was deemed to have been subject to an Overdraft Fee. For each item identified, also state:

- (a) the date and time Limestone Bank authorized the item;

- (b) the date and time Limestone Bank received the item;
- (c) the amount of available funds in the account being debited at the time the transaction was initiated and the manner in which Limestone Bank determined available funds;
- (d) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the manner in which you determined available funds;
- (e) the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds;
- (f) the date and time the item was debited from the account;
- (g) the amount by which the transaction overdrew the account; and
- (h) the date and time Limestone Bank received payment for an Overdraft Fee.

**RESPONSE:**

**INTERROGATORY NO. 3:**

Identify each NSF Fee Limestone Bank assessed against an account held by Plaintiffs, and for each such fee, identify each item that was the basis for the NSF Fee and state all facts that show the basis on which the account was deemed to have been subject to an NSF Fee.

For each item identified, also state:

- (a) Customer account number;
- (b) Posting date;
- (c) Transaction amount;



- (d) Transaction code;
- (e) Retry or repeat transaction indicator;
- (f) Transaction category;
- (g) The date and/or time an NSF Fee was charged to the account based on the transaction;
- (h) Fee amount;
- (i) Merchant name; and
- (j) Transaction description field.

**RESPONSE:**

**INTERROGATORY NO. 4:**

Describe with particularity all policies, practices or procedures Limestone Bank used, at any time during the Relevant Time Period, to determine the manner in which items are posted to customers' accounts, including, but not limited to, Limestone Bank's policies, practices or procedures to charge Limestone Bank customers Overdraft Fees, including Overdraft Fees on transactions authorized with sufficient available funds at the time of authorization. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedure.

**RESPONSE:**

**INTERROGATORY NO. 5:**

Describe with particularity all policies, practices, or procedures Limestone Bank used to

charge customers NSF Fees, including NSF Fees on items for which NSF Fees had already been assessed one or more times. Your response to this request should include a description of any proposed or implemented changes to that policy, practice, or procedures used during the Relevant Time Period.

**RESPONSE:**

**INTERROGATORY NO. 6:**

Identify all persons with knowledge of Limestone Bank's decisions concerning the creation, adoption, implementation, or proposal of any changes to each policy, practice, and procedure described in Interrogatories 4 and 5 above.

**RESPONSE:**

**INTERROGATORY NO. 7:**

If any policy, practice or procedure described in Interrogatories 4 and 5 above changed or if a change was considered but not adopted or implemented, explain in detail who was involved in considering, deciding to adopt, or implementing the change; when the change was made or considered; how the change was implemented internally and how Limestone Bank customers were notified; why Limestone Bank changed or considered changing the policy, practice, or procedure; and why Limestone Bank opted not to adopt or implement the proposed change, and identify all documents concerning the change.

**RESPONSE:**

**INTERROGATORY NO. 8:**

Explain in detail all actions Limestone Bank has taken to disclose or inform its account

holders of its policies, practices, and procedures concerning Overdraft Fees, NSF Fees, and how account holders can check their available balance on their checking account.

**RESPONSE:**

**INTERROGATORY NO. 9:**

On an annual basis for each year during the Relevant Time Period, state:

- (a) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions you assessed against your customers' accounts;
- (b) the aggregate total dollar amount of Overdraft Fees based on debit card and/or ATM transactions assessed against customers' accounts that you have forgiven, waived, reversed or otherwise not collected;
- (c) the number of your customers' accounts that have been assessed Overdraft Fees on electronic transactions initially authorized into a positive available balance;
- (d) Limestone Bank's total gross revenues from consumer banking operations;
- (e) Limestone Bank's total service fees on deposits;
- (f) the aggregate total dollar amount of NSF Fees assessed against Limestone Bank customers; and
- (g) the aggregate total dollar amount of NSF Fees assessed against Limestone Bank customers for "retry payments."

**RESPONSE:**

**INTERROGATORY NO. 10:**

Explain in detail how Limestone Bank determines whether to authorize a debit transaction

made on a customer's account. In the event an automated algorithm is used, describe in detail each factor considered by the algorithm and the weight ascribed to each such factor.

**RESPONSE:**

**INTERROGATORY NO. 11:**

Identify and describe the policy or procedures by which you have processed and posted or currently process and post pending items to your customers' checking accounts when calculating and displaying the balances of their checking accounts to your customers, the reason(s) for such policy or procedures, and whether such policy or procedures applied to all deposit accounts.

**RESPONSE:**

**INTERROGATORY NO. 12:**

Explain in detail the order in which you list items on your customers' account statements, your reason(s) for listing them in that order, and whether such ordering applied to all deposit accounts.

**RESPONSE:**

**INTERROGATORY NO. 13:**

Explain in detail the current and former policy or procedure by which Limestone Bank's internet or mobile banking service or application displays pending items to Limestone Bank customers' checking accounts and posted items to Limestone Bank customers' checking accounts.

**RESPONSE:**

**INTERROGATORY NO. 14:**

Identify and describe any documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning Limestone Bank's Overdraft or NSF Fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue projections.

**RESPONSE:**

Dated: May 3, 2023

By: /s/ Andrew Mize

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*Attorneys for Plaintiff and the Putative Class*

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Presiding Judge: HON. MITCH PERRY (630267)

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**COMMONWEALTH OF KENTUCKY  
JEFFERSON CIRCUIT COURT**

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

LIMESTONE BANK, INC.,

Defendant.

Cause No.

**PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION  
TO DEFENDANT LIMESTONE BANK**

Pursuant to Kentucky Rules of Civil Procedure (CR) Rule 26.01 and 34.01, Plaintiff submits the following First Set of Requests for Production to Defendant and requests that Defendant produce the Documents and things described herein for inspection and copying within 45 days.

**DEFINITIONS**

As used herein the following terms have the following meanings:

1. "Communication" means any oral, written, or electronic utterance, notation, or statement of any nature whatsoever, draft or final, potential or actual, by and to whomever made or attempted to be made, including, but not limited to, correspondence, memoranda, conversations, dialogues, discussions, meetings, interviews, consultations, agreements, electronic messages (including electronic-mail, text messages, instant messages, and company intranet, electronic bulletin board or Internet site posting), video or audio recordings, and other understandings between two or more persons.

2. "Defendant" or "You" means Limestone Bank, Inc., and includes any and all

predecessors or successors in interest, local, regional, national, and/or executive offices, divisions, or affiliates (foreign and domestic), segments, or divisions thereof, any of its subsidiaries, special purpose entities, divisions or affiliates, and all of their present and former officers, directors, employees, consultants, agents, directors, attorneys, accountants, advisors, and all other Persons acting or purporting to act on their behalf.

3. “Document” includes, but is not limited to, all handwritten, typed, printed, punched, coded, tape recorded, photographed, or otherwise reproduced, printed, recorded or graphic statements, physical objects, communications or other matter, including all drafts, correspondence, electronic-mails (“e-mails”), text messages, instant electronic messages, computer records, disk files, letters, telegrams, telexes, TWX’s, memoranda, notes, sound recordings, legal instruments, declarations, filings, plans, diagrams, pictures, circulars, announcements, manuals, brochures, publications, statistical records, desk calendars, appointment books, diaries, computer printouts, data processing program libraries, data processing input and output, computer memories, microfilm, accounts, journals, ledgers, bills, invoices, purchase orders, checks, receipts and the like, and each and every copy, duplicate draft, reproduction, prior draft, excerpt, note and summary of, or prepared from, any of the foregoing which is not identical to the original due to corrections, alterations, notations, initials, deletions, marginal markings, underscoring, conformation or indication of routing, known to you and each and every such document which can be located or discovered by reasonable diligent efforts. “Document” includes information and data stored in electronic form.

4. “Overdraft Fee” means a fee assessed on an item purportedly paid into overdraft.

5. “Person” means any natural person acting in any capacity and/or any entity or organization, including divisions, departments, and other units therein, and shall include, but not

be limited to, a public or private corporation, partnership, association, group, organization, joint venture, committee, proprietorship, trust, estate, any government and/or governmental body, including, but not limited to, any commission, board, bureau and/or agency, and all other forms of business, governmental, or juridical person or other entity.

### **RELEVANT TIME PERIOD**

All requests herein refer to the period from May 1, 2008 to the present (“Relevant Time Period”) unless otherwise specifically indicated and shall include all information and Documents that relate to such period even though prepared or published outside of the Relevant Time Period.

### **REQUESTS FOR PRODUCTION**

#### **REQUEST FOR PRODUCTION NO. 1:**

Produce all Documents that concern any account of any type associated with Plaintiff, whether presently open or closed, including, but not limited to, any and all communications between Defendant and Plaintiff, and Documents sufficient to show all account activity in any such account.

#### **RESPONSE:**

#### **REQUEST FOR PRODUCTION NO. 2:**

Produce the account contract(s), disclosures, and all related Documents that Defendant contends govern any aspect of Plaintiff’s relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

#### **RESPONSE:**

**REQUEST FOR PRODUCTION NO. 3:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against an account held by Plaintiff, produce all Documents reflecting:

- (a) the date and time the transaction was initiated, authorized, and when you first received notice of the dollar amount of the transaction;
- (b) the amount of available funds in the account being debited at the time the transaction was initiated and the way you determined available funds;
- (c) the amount of available funds in the account being debited at the time you first received notice of the dollar amount of the transaction and the way you determined available funds;
- (d) the amount of available funds in the account being debited at the time the transaction was authorized and the way you determined available funds;
- (e) the amount by which the transaction overdrew the account;
- (f) the date and time the Overdraft Fee was deducted from the account based on the transaction; and
- (g) the date and time Defendant received payment for the Overdraft Fee.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 4:**

Produce all Documents concerning the specific criteria and dollar amounts upon which Defendant determined whether or not transactions would be authorized where such authorization would cause an overdraft, including, but not limited to: the ledger balance in the account, the available balance, the collected balance in the account, the historical frequency of overdrafts, the



historical total of overdrafts and Overdraft Fees, the dollar amount of the particular charge, the dollar amount per day, the consistency of deposits, and/or the existence of other accounts at Defendant.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 5:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to charge Defendant customers Overdraft Fees, including on transactions authorized with sufficient available funds at the time of authorization and Overdraft Fees caused as a result of the deduction of other Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 6:**

Produce all Documents concerning all policies or procedures used, at any time during the Relevant Time Period, to deduct Overdraft Fees from accounts immediately and prior to the availability of sufficient funds to pay them.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 7:**

Produce all Documents concerning all methods by which Defendant customers can obtain information on the available balance of their checking accounts.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 8:**

Produce the account contracts and/or disclosures and all related Documents that Defendant contends govern any aspect of a checking account customer's relationship with Defendant. Include in your response any notices or messages delivered to Defendant customers reflecting any revision or modification of any such contract, disclosure, or related Document.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 9:**

Produce all Documents that Defendant has provided to Defendant customers reflecting a schedule of fees, including, but not limited to, Overdraft Fees, for services. Include all notices or messages sent to Defendant customers regarding any revision or modification of such schedule of fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 10:**

Produce organizational charts sufficient to show the names, titles and positions of all Persons, departments, entities, divisions, subdivisions, affiliates, subsidiaries, agents and other Persons and entities that provide checking account and overdraft fee services to Defendant's customers, including, but not limited to, all Persons and entities involved in determining or assessing fees, operating your Hogan or RTS (or equivalent) system, or operating any debit card processing systems, and all Persons and entities with responsibilities pertaining to the storage and retention of written and electronic records related thereto.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 11:**

Produce exemplar copies of all advertisements and other marketing materials utilized by Defendant to promote Defendant checking accounts and overdraft services.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 12:**

Produce all Documents that refer or relate to market research, surveys, studies, analysis, and/or other consumer research or surveys conducted on the topic of debit cards or Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 13:**

Produce exemplar screen-by-screen depictions of the Defendant online or mobile banking interface displaying the appearance of authorized or pending transactions before and after they are posted to an account.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 14:**

For each transaction that was the basis for an Overdraft Fee Defendant assessed against a checking account, produce all Documents concerning the following data elements: customer account number; posting date; transaction amount; transaction code; available balance at the time of posting; ledger balance at the time of posting; recurring payment indicator; problem item indicator; negative authorization indicator; transaction category or type; the date and/or time an

Overdraft Fee was charged to the account based on the transaction; Overdraft Fee amount; the date and time the transaction was authorized; the amount authorized; and the amount of available funds in the account being debited at the time the transaction was authorized and the manner in which you determined available funds.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 15:**

For each transaction representing a refund of an Overdraft Fee credited to a checking account, produce all Documents concerning the customer account number; posting date; transaction amount; and transaction code.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 16:**

Produce all consumer complaints regarding the practices challenged in Plaintiff's complaint and all communications regarding the same.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 17:**

Produce all Documents that refer or relate to all methods by which Defendant customers can obtain information regarding resubmission of electronic payments through the ACH system.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 18:**

Produce Documents, including a general ledger, sufficient to reflect your quarterly and annual revenue, margins, and net income during the Relevant Time Period, including, without limitation, your revenue, margins and net income from fees and other non-interest charges, including, without limitation, your revenue, margins and net income from Overdraft Fees.

**RESPONSE:**

**REQUEST FOR PRODUCTION NO. 19:**

Produce all Documents prepared by any other third-party advisors, and all Communications with these third-party advisors, concerning Defendant fee policies, procedures, practices, agreements and disclosures, and/or revenue or revenue projections.

**RESPONSE:**

Dated: May 3, 2023

By: /s/ Andrew Mize

Andrew Mize (Ky. Bar No. 94453)  
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*\*Pro hac vice* applications forthcoming

*Attorneys for Plaintiff and the Putative Class*

BP4HX3R1E-A1E62-4DZB-9602-7DCFE62HE499 : 000089 of 000086

Presiding Judge: HON. MITCH PERRY (630267)

RPD : 000010 of 000010

AOC-E-105  
Rev. 9-14

Sum Code: CI

Commonwealth of Kentucky  
Court of Justice [Courts.ky.gov](https://courts.ky.gov)

CR 4.02; Cr Official Form 1

**CIVIL SUMMONS**Case #: **23-CI-002712**Court: **CIRCUIT**County: **JEFFERSON Circuit***Plaintiff, COOPER, ROBIN VS. LIMESTONE BANK, INC., Defendant***TO: LIMESTONE BANK, INC.  
2500 EASTPOINT PKWY  
CEO JOHN T. TAYLOR  
LOUISVILLE, KY 40223**

The Commonwealth of Kentucky to Defendant:

You are hereby notified that a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf within twenty (20) days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached complaint.

The name(s) and address(es) of the party or parties demanding relief against you or his/her (their) attorney(s) are shown on the document delivered to you with this Summons.

Jefferson Circuit Clerk

Date: **5/3/2023****Proof of Service**

This Summons was:

☐ Served by delivering a true copy and the Complaint (or other initiating document)

To: \_\_\_\_\_

☐ Not Served because: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_

Served By \_\_\_\_\_

Title \_\_\_\_\_

Summons ID: @00001032292

CIRCUIT: 23-CI-002712 Certified Mail

COOPER, ROBIN VS. LIMESTONE BANK, INC.



Case No. 23-CI-002712

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

PLAINTIFF

v.

**AGREED ORDER EXTENDING DEFENDANT'S**  
**DEADLINE TO ANSWER OR OTHERWISE**  
**RESPOND TO PLAINTIFF'S COMPLAINT**

PEOPLES BANK,

DEFENDANT

\* \* \* \* \*

COMES NOW Defendant Peoples Bank (“Defendant”) and Plaintiff Robin Cooper, individually and on behalf of all others similarly situated (“Plaintiff”), by and through their respective undersigned counsel, and jointly submit this agreed order agreeing to extend Defendant’s deadline to answer or otherwise respond to Plaintiff’s complaint until August 28, 2023.

By agreement of the parties and the Court being otherwise duly advised, **IT IS HEREBY ORDERED THAT** the deadline for Defendant to answer or otherwise respond to Plaintiff’s complaint is extended up to and including August 28, 2023.

HAVE SEEN AND AGREED:

/s/ Andrew Mize (with permission)

Andrew Mize (Ky. Bar No. 94453)  
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*Counsel for Plaintiff and the Putative Class*

/s/ C. Anne Stewart

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*Counsel for Defendant Peoples Bank*

# **EXHIBIT**

# **C**



Case No. 23-CI-002712

JEFFERSON CIRCUIT COURT  
DIVISION THREE (3)  
CHIEF JUDGE MITCH PERRY

ROBIN COOPER, individually and on behalf  
of all others similarly situated,

PLAINTIFF

v.

**NOTICE OF FILING NOTICE OF REMOVAL**

PEOPLES BANK,

DEFENDANT

\* \* \* \* \*

PLEASE TAKE NOTICE that on July 28, 2023, Defendant Peoples Bank (“Peoples Bank”), by and through its undersigned counsel, removed this action by filing a Notice of Removal in the United States District Court for the Western District of Kentucky, Louisville Division, together with a complete copy of all process, pleadings, and orders served, filed, or entered in the state court action as of the date of the filing of the removal. A true and correct copy of the Notice of Removal is filed with this Court pursuant to 28 U.S.C. §§ 1331, 1441, and 1446 and attached hereto as Exhibit A.

Respectfully submitted,

/s/ C. Anne Stewart

Joseph N. Tucker

C. Anne Stewart

DINSMORE & SHOHL LLP

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Louisville, KY 40202

Telephone (502) 540-2300

Facsimile (502) 585-2207

joseph.tucker@dinsmore.com

annie.stewart@dinsmore.com

*Counsel for Limestone Bank, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing was electronically filed on July 28, 2023 via the KYeCourts system, which will send notification of such filing to all attorneys of record.

/s/ C. Anne Stewart

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [\\$1.1M+ Limestone Bank Settlement Offers Cash to Accountholders Charged Certain Overdraft Fees](#)

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